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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 372.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFF IN ERROR,

vs.

W. W. TAYLOR, ISAAC TAYLOR, JAMES TAYLOR, AND S. T. WITT, PARTNERS IN TRADE UNDER THE FIRM NAME AND STYLE OF W. W. TAYLOR, SONS AND WITT.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 31, 1913.

(23,411)

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1 In the Supreme Court of Appeals of Virginia.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff,
v.
W. W. TAYLOR SONS & WITT, Defendants.

Petition for Writ of Error from Circuit Court of Lee County.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Keokee Consolidated Coke Company, a corporation, respectfully shows unto your honors that it is aggrieved by a final order entered by the Circuit Court of Lee County, on the 16th day of September, 1910, in an action at law pending in said court wherein W. W. Taylor Sons & Witt, a partnership composed of W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, were plaintiffs and your petitioner was defendant, which order gave judgment against your petitioner for the sum of $184.05, with interest from January 1, 1910, and the costs of suit, and it desires a writ of error to the said order, and accompanies this, its petition, with a complete transcript of the record in said cause.

I.

2 *Pleadings and Facts.*

In April, 1910, two suits at law, being actions in assumpsit, were filed in the Circuit Court of Lee County, by W. W. Taylor Sons & Witt, one against your petitioner, the Keokee Consolidated Coke Company, the other against the Keokee Coal & Coke Company. Both were of the same nature, and both sought to recover a money judgment on a series of orders, commonly called *script*, which it was alleged had been issued by the two defendant companies, in small amounts, to various employes which had been assigned by said employes to the plaintiffs. Your petitioner, the Keokee Consolidated Coke Company, filed a plea setting forth that the Keokee Coal & Coke Company, a foreign corporation, had, prior to the bringing of said suits been dissolved and all its rights and liabilities had devolved upon petitioner. On the 16th day of September, 1910, an agreement of facts, signed by counsel for both parties, was filed, which was to constitute all the evidence in the cause; a jury was waived and all questions of law and facts were submitted to the court for its decision, whereupon the court gave judgment against petitioner as aforesaid (P. —). This order shows that petitioner raised the constitutional question, both as to the Constitution of Virginia and of the United States against the entering of a money judgment on the claim sued on. A bill of exceptions was taken, and

the action of the court was excepted to, and the court was
3 moved to set aside the judgment and give judgment in favor of the petitioner, which motion was over-ruled.

The facts show that petitioner is a coal mining and coke manufacturing company, with its chief plant located in Lee County, Virginia, and it employs a large number of laborers; that it has one regular pay-day each month, at which time it pays to all of its employes, in cash, all that is shown to have been due them at the end of the last preceding calendar month on the books of the company; that any laborer so desiring could, during the month, and before pay-day if anything should be due him could apply at the Company's office and sign a so-called Scrip Order, which being properly filled up and dated is delivered to him and with it he could buy at the Company's Commissary any amount of goods, not exceeding the face of said order. The custom of Petitioner was never to redeem any of this so-called Scrip in money, but it always redeemed same in merchandise in its store whenever requested, and this custom was known to all of its employes, including those whose Scrip Orders were assigned to the Plaintiffs and form the basis of this Action. None of the Scrip sued on was ever presented for payment in merchandise. If it had been so presented it would have been paid in merchandise such as was kept in the Company's Store and at current prices. All this Scrip sued on was presented by the Plaintiffs and payment demanded in money, which was refused.

II.

Assignments of Error.

The Circuit Court of Lee County erred in its judgment herein; first, because the transaction under review does not violate the Act of Assembly of Virginia of 1887-'8, P. 131 (Code of 1904, Sec. 3657*d*) commonly known as the "Scrip Act."

4 Second; if the act under review should be held to violate this Statute then the Statute itself is unconstitutional.

That portion of the act which needs consideration here is a part of Section 3, as follows:

"That from and after the passage of this Act it shall not be lawful for any person, firm, company, corporation or association engaged in the business aforesaid, their clerk, agent, officer, or servant in this state to issue for payment of labor any order or other payment (paper?) whatever, unless the same purports to be redeemable for its face value in lawful money of the United States made payable on demand and without condition to employe or bearer, bearing interest at legal rate and redeemable by the person, firm, company, corporation, or association giving, making or issuing the same."

The so-called scrip in this case is not an "order" or "other payment," issued for the payment of labor, as contemplated by Section 3 of the Act in question.

It is an order issued by the laborer on the company payable to bearer, and chargeable against his account. The Laborer is free to

issue such an order, and there is no ban in law against it—the company may accept it or it may not. The laborer cannot compel the company to accept it, but if it does accept it, it accepts it in the terms of the order; that is, payable in merchandise only. This order is payable to bearer. It is an order voluntarily made by a laborer on his employer. It is issued in favor of bearer and a third party holding it can stand on no higher rights that the laborer who issued it.

The evil aimed at by this statute was an order drawn and signed by the employer upon itself, or a third person, and payable to the laborer or to bearer, which it induced the laborer to accept for money due, and in lieu thereof. Such orders, payable in merchandise, are often issued by mining and manufacturing companies, and we believe they were the only form of so-called scrip which
5 was in use in 1887, when the Act in question was passed.

Coupled with this requirement of the act is the further one of a monthly pay-day. The evil aimed at was an infrequent pay-day, and the laborer through his necessities, being compelled, or easily induced, to accept these orders issued by the company payable otherwise than in money. This was a form of oppression which the statute was designed to break up.

If, however, the laborer himself voluntarily and before any money becomes due to him and payable to him issues his own order upon his employer, payable otherwise than in money the act in question is not violated.

In other words, the system under review in this suit is an advance to the laborer of a part or all of his wages before pay-day, and before anything becomes due to him, made upon the request of the laborer, and for his special benefit. There is no oppression under this system; on the contrary it is plainly beneficial to the laborer.

In the case at Bar it is conceded that the employing company has a monthly pay-day and that it pays in cash the balance due to the laborer for this preceding month's work after deducting such advance payments as have been made to him and such other sums as he has directed to be deducted. The laborer is not required, and is not solicited, to make any of these scrip orders. He makes them voluntarily, and when made, they are charged against his account. By this system the laborer gets credit at the commissary which he could not otherwise get. Suppose this system were wiped out, what would be the result? The laborers would go to the company's commissary between pay-days and offer to purchase goods on
6 credit and the goods would be sold him and the amount thereof would be charged against his labor account on the company's books, and on pay-day he receives the balance due him in money. If the laborer should not be known by the commissary clerk to have any money due him, credit would probably be refused, or the clerk would apply to the bookkeeper to know the status of the laborer's account before making a sale. Now, in order to avoid this delay and confusion, under the system in question the laborer first applies to the bookkeeper or scrip clerk and learns that he has something due him from the company; he then issues his order on the company for an ad-

vance payment of a part of what is due him, payable in merchandise. This order is accepted by the company and the laborer takes it to the commissary and presents it to the commissary clerk as an evidence of his standing on the books of the company. It is certain that the company is due him at least the amount of this order, and he is entitled to trade out that amount, either at one time or at several times. Instead of writing an acceptance on each separate order, the company has provided a book of printed blanks, with stubs, for time-saving and convenience. As the amounts are always small and the printing of these blanks is peculiar in form, it is not probable that there will be any counterfeiting; therefore, any order given by an employe on one of these blanks is treated by the company regularly as an acceptance. This is the entire transaction, and it does not violate either Section 2 or 3 of the Act in question.

The plan sought to be prohibited by this Act was where the commissary privileges of the mining or manufacturing company were farmed out to third parties, as is still sometimes done, we believe.

7 There the company gives an order not on itself, but on a third person in favor of an employe to satisfy his own requirements and at the same time pay a bonus to the company: that is, he makes a double profit. Such a system is capable of abuses which are not possible under the system involved in this suit.

III.

The Act in Question is Unconstitutional.

The Act violates the Virginia Bill of Rights which provides that no man shall be deprived of his liberty except by the law of the land. It also violates the 14th Amendment of the Constitution of the United States.

This Statute, as Petitioner is advised, has never been passed upon directly by this Court. In Young's case 101 Va., 853, which was a case involving the constitutionality of the Trading Stamp Act of Virginia passed at the session of 1897-8 that Act was held unconstitutional, as violating both the Virginia Constitution and that of the United States. Liberty, in this connection, was held to mean the right to earn a livelihood by any lawful calling, and to enter into all contracts which may be proper or necessary to earn such livelihood. The only power that a State has over such matters is what is generally known as the "police power," by which the State may control all matters pertaining to the public safety, the public health, or the public morals, and that as the Act there under review did not

8 interfere with any one of these three things it was held an unwarranted interference with the private business of citizens and therefore unconstitutional and void.

We find upon investigation that this same Act, in its identical form, has been passed upon in two cases by the Supreme Court of West Virginia and declared unconstitutional on the grounds above named. The Supreme Court of Pennsylvania also held an act almost identical with this unconstitutional. The Pennsylvania case is that

of Godcharles and others v. Wigeman, 6th At. Rep., 354 (October 4, 1886); the statute in that case required the payment of wages of laborers in iron mills, mines etc., to be paid at regular intervals and in lawful money of the United States. The Court in deciding that case holds as follows:

"The first, second, third and fourth section- of the Act of June 29th, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the Legislature to do what, in this country, cannot be done; that is, prevent persons who are sui juris from making their own contracts. The act is an infringement alike of the rights of the employer and of the employee. More than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges and consequently vicious and void."

The two West Virginia Cases are: State v. Godwill, 10 S. E. Rep. 285; and State v. Fire Creek Coal and Coke Company 10 S. E. Rep. 288. These cases were decided November 18th, 1889. The State of West Virginia, in 1887, passed the same act as the State of Virginia passed in the same year, which is the one above quoted, 3657*d*; the two acts are identical in language, or practically so. The Goodwill case decided the scrip question, or Sec. 3 of the Act; while the Fire Creek Coal & Coke Company case decided the Commissary profit feature contained in Sec. 4. Both of these cases were fully considered and the authorities collected, and the Court without hesitation and unanimously, held both Sections 3 and 4 unconstitutional.

Such legislation was held to be class legislation and on that ground unconstitutional, and also on the ground that it violated the Bill of Rights and 14th Amendment to the United States Constitution above referred to. We quote the following from the opinion of the Court in the Goodwill case:

"The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him in employing these in what manner he may think proper, without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment upon the just liberty and rights of the workman and his employer, or those who may be disposed to employ him, for the legislature to interfere with the freedom of contract between them, as such interference hinders the one from working at what he thinks proper and at the same time prevents others from employing whom he chooses. A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor,

make contracts in respect thereto, upon such terms as may be
10 agreed upon by the parties; to enforce all lawful contracts;
to sue, and give evidence; and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitute the essential distinction between freedom and slavery, between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States and other courts."

From the case of State v. Fire Creek Coal & Coke Company, Supra, we quote the following:

"There are many considerations for selling goods or supplies at less per cent of profit to one customer than to others. The goods may be of the 'like character, kind, quality and quantity' and still there may be considerations, entirely proper, why the sale should not be at the same price in all cases—such as the character and promptness of the customer; the risk of loss or time of payment, the aggregate amount of purchases by the same person of different kinds of goods or supplies. It may be more profitable to sell a large bill of different kinds of goods to a large consumer than to sell one of the same kind of articles to one who buys nothing else * * * The ground on which this act is condemned is that it is class legislation, and an unjust interference with the rights, privileges and property of both the employer and the employee, and places upon both the badge of slavery, by denying to the one the right to manage his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself, or manage his own private affairs."

There are a number of similar cases which have been passed on by the courts of other states, pointing in the same direction but not coming so closely up to our act as the West Virginia cases. We refer to only one of these, in Millet v. People, 117 Ill., 294, 7 N. E. Rep. 631, the Supreme Court of Illinois, in a well-considered opinion, held unconstitutional and void an Act of the Legislature of that State
which required the owners or operators of mines to provide
11 scales for weighing their coal, and make the weight of coal
the basis of the wages of miners. A part of the syllabus is as follows:

"It is not competent for the legislature, under the Constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property of employers of labor, and prohibit them from making contracts which it is competent for other owners of property of employers of labor to make. Such legislation cannot be sustained as an exercise of the police power."

The case of Braceville Coal Company v. People, 147 Ill. 66, 37 AM. St. Rep., p. 206, is a case which construes a similar statute to the one in question and considers many phases of the various questions which arise on the question of the right to contract; the Court says:

"If any person is denied the right to contract and acquire property in the manner which he has long enjoyed under the law, and

which others are still allowed by the law to enjoy, he is deprived of both the constitutional right of liberty and property, to the extent he is thus denied the right to contract."

In case of Avent-Beatyville Coal Company v. Commonwealth 28 L. R. A. 273 the Kentucky Court of Appeals held unconstitutional a statute similar in all respects to the one now under consideration, as also did the Missouri Court in the case of State v. Missouri Tie & Timber Company, 181 Mo. 536, 80 S. W. 933, 101 Am. State Rep. 614 decided in May, 1904.

12 IV.

The Act in question requires that when an employe is paid it shall be in lawful money, or in paper redeemable in lawful money, payable on demand and bearing a legal rate of interest. This clearly does not cover an advance for wages. No debt can bear interest until it is due. None of the scrip in controversy herein was issued after the wages of the laborers in question had become due. It is clear therefore that the Act is aimed not at advance payments in the form under consideration, but only at payments made in the prohibited form on or after pay-day.

Wherefore, for the reasons above assigned, Petitioner prays that it be granted a writ of error to the judgment of the circuit court of Lee County complained of herein and that upon a final hearing hereof the said judgment may be reversed and annulled and judgment given for Petitioner.

KEOKEE CONSOLIDATED COKE COMPANY,
By COUNSEL.

PENNINGTON BROS.,
IRVINE & MORRISON,
For Petitioner.

STATE OF VIRGINIA,
County of Wise:

I, R. T. Irvine, an attorney practicing in the Supreme Court of Appeals of Virginia, certify that in my opinion there is error in the judgment complained of in the foregoing petition for a writ of error and that the same should be reviewed by the Supreme Court of Appeals of Virginia.

Given under my hand this 12th day of Sep. 1911.

R. T. IRVINE.

Record and Petition received September 13, 1911.

JAMES KEITH.

Refused:

JAMES KEITH.
JOHN A. BUCHANAN.
STAFFORD G. WHITTLE.
GEORGE M. HARRISON.

13 VIRGINIA:

In Assumpsit.

W. W. TAYLOR SONS & WITT
vs.
KEOKEE CONSOLIDATED COKE COMPANY

and

W. W. TAYLOR SONS & WITT
vs.
KEOKEE COAL & COKE COMPANY.

Please Before the Circuit Court of Lee County, at the Court House

Thereof, on the — Day of April, 1910.

Be it remembered that heretofore, to-wit, at rules held for the said court in the Clerk's Office on the third Monday in April, 1910, came W. W. Taylor Sons & Witt by their attorneys and filed their declarations against Keokee Consolidated Coke Company and Keokee Coal & Coke Company, which are as follows:

Declarations.

VIRGINIA:

In the Circuit Court for Lee County.

W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, merchants and partners in trade doing business under the firm name of W. W. Taylor Sons & Witt, complains of the Keokee Consolidated Coke Company, a corporation, who has been duly summoned, of a plea of trespass on the case in assumpsit, for this to-wit, that heretofore to-wit, on the — day of ——, 1909, the said defendant was indebted to the following named persons in the amounts set opposite their respective names, who were employees of said defendant in and about its coal mines and coking plant situated at Keokee in Lee County, Virginia, for work and labor done and services
14 rendered by said employees for said defendant at its special instance and request, to-wit:

Sam Delph	$3.00	L. D. Garber	$3.00
Bond Miller	3.00	Coy Sprouse	3.00
John Lemons	3.00	Will Bush	3.00
C. W. Harmon	3.00	Boyd Pennington	3.00
C. H. Carter	3.00	Charles Rice	3.00
John Oxford	3.00	John Oxford	3.00
John Oxford	3.00	Arthur Lewis	2.00
Joe Baker	2.00	James Whitehead	2.00
Will Glover	2.00	Henry Maggard	2.00
Henry Maggard	2.00	John Oxford	2.00
Jordan Fields	2.00	Jordan Fields	2.00
Chas. Rice	2.00	Loyd Debusk	2.00

L. Witt	2.00	A. Montgomery	2.00
Patton Yeary	2.00	Will Smyth	2.00
Willie Lewis	2.00	G. W. Stanley	2.60
Russell Haskins	2.00	Alfred Wiliams	2.00
Hugh Carter	1.00	Patton Yeary	1.00
Coy Smith	1.00	Boyd Pennington	1.00
D. M. Catron	1.00	William Alexander	1.00
Chas. Reese	1.00	Jacob Cabion	1.00
Chas. Reese	1.00	Jacob Cabion	1.00
Loyd Heron	1.00	Chas. Robinson	1.00
L. B. Garber	1.00	C. E. Moore	1.00
Andy Jones	1.00		

The whole of which said indebtedness amounted to a large sum of of money, to-wit, the sum of $—, and being so indebted to said employees as aforesaid, they the said employees sold and transferred their said indebtedness to the said plaintiffs, of which said sale and transfer as aforesaid the said defendant then and there had
15 notice; by means whereof the said defendant became indebted to the said plaintiff in a large sum of money, to-wit, in the sum of $—, and being so indebted to the said plaintiffs as aforesaid, it, the said defendant, afterwards to-wit, on the — day of ——, 1909, in consideration thereof agreed, undertook and faithfully promised said plaintiffs to pay them said sum of money whenever thereunto afterwards requested.

And for this also heretofore to-wit, the said Keokee Consolidated Coke Company, a corporation, was indebted to the employees mentioned and enumerated in the first count hereof and in the amounts therein mentioned for work and labor done and services rendered in and about the mining of coal and the manufacturing of coke at its coal and coking plants situated at Keokee in Lee County, Virginia, and being so indebted to said employees as aforesaid, the said defendant afterwards, to-wit, on the — day of —— 1909 agreed, undertook, and faithfully promised to pay said employees and each of them the full amount and value of the labor which said employees had done and performed for it whenever thereunto afterwards requested.

And the said employees and each of them afterwards, to-wit, on the — day of ——, 1909, sold and transferred said indebtedness of the said Keokee Consolidated Coke Company to the said plaintiffs, and in consideration thereof the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised said plaintiffs to pay them the said sums of money whenever thereunto afterwards requested, which said sums amounted in the aggregate to $—.

16 . And for this also, to-wit, that on the — day of ——, 1909, in the said County of Lee, the said defendant was justly indebted to the parties and persons enumerated in the first count hereof, and in the various and respective amounts therein named, its employees, for work and labor done and services rendered to the said defendant in and about the mining of coal and the manufact-

uring of coke at their coal and coking plants situated at Keokee in Lee County, Virginia, at its special instance and request, and being so indebted to the said employees the said defendant, the Keokee Consolidated Coke Company, Incorporated, at its said Keokee operation in Lee County, Virginia, issued and delivered to each of said employees a paper commonly called Scrip for the amount of his labor, which is in the shape of an order and reads as follows: "Please pay to bearer, in merchandise only from your store at Keokee, to the value of attached coupon not to exceed amount shown at left and charge the full amount shown herein to my account." And each of the aforesaid employees of the said defendants afterwards, to-wit, on the — day of ——, 1909, sold and transferred and delivered their said several respective papers commonly called scrip to the said plaintiffs while said defendants were so indebted to them, the said employees as aforesaid, by means whereof the said defendant became indebted to the said plaintiffs in a sum equal to the aggregate amount of said papers commonly called scrip, which is the whole amount to the sum of $— the value of work done and labor performed for said defendant at its special instance and request by said employes as aforesaid, and being so indebted to the said plaintiffs the said defendant afterwards, to-wit, on the — day of ——, 1909,
17 agreed, undertook and faithfully promised said plaintiffs to pay them said several sums of money whenever thereunto afterwards requested.

Yet the said defendant, not regarding its several promises and undertakings aforesaid, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do, but to pay the same or any part thereof to the said plaintiff, the said defendant hath hitherto wholly refused and still doth refuse and neglect so to do, to the damage of the said plaintiffs $300.00. Therefore they bring their suit.

J. C. NOEL.
DUNCAN & CRIDLIN.

VIRGINIA:

In the Circuit Court for Lee County.

W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, merchants and partners in trade doing business under the firm name of W. W. Taylor Sons and Witt, complains of the Keokee Coal & Coke Company, a corporation, who has been duly summoned, of a plea of trespass on the case in assumpsit, for this to-wit, that heretofore, to-wit, on the — day of ——, 1909, the said defendant was indebted to the following named persons in the amounts set opposite their respective names, who were employees of said defendant in and about its coal mines and coking plants situated at Keokee in Lee
18 County, Virginia, for work and labor done and services rendered by said employees for said defendant at its special instance and request, to-wit:

L. Ferguson	$4.00	C. H. Carter	$4.00
Angelo Marina	4.00	J. B. Motta	4.00
H. Davis	4.00	Chas. Reese	4.00
Will Lewis	4.00	Willie Lewis	4.00
Will Lewis	4.00	Peter Balletti	4.00
J. B. Stidham	4.00	J. B. Stidham	4.00
Lee Hess	4.00	John Grovenor	4.00
Theo Adams	4.00	J. K. Gates	5.00
John Palmer	5.00	L. B. Garber	5.00
Will Templeton	5.00	Leonard Curl	5.00
M. D. Fleenor	5.00	C. H. Carter	5.00
Will Smyth	5.00	C. W. Harman	5.00
Isaac Maggard	5.00		

The whole of which said indebtedness amounted to a large sum of money, to-wit, the sum of $—, and being so indebted to said employees as aforesaid, they the said employees sold and transferred their said indebtedness to the said plaintiffs, of which said sale and transfer as aforesaid the said defendant then and there had notice, by means whereof the said defendant became indebted to the said plaintiffs in a large sum of money, to-wit, in the sum of $—, and being so indebted to the said plaintiffs as aforesaid, it the said defendant, afterwards, to-wit, on the — day of ——, 1909, in consideration thereof agreed, undertook and faithfully promised said plaintiffs to pay them said sum of money whenever thereunto afterwards requested.

And for this also heretofore, to-wit, the said Keokee Coal & Coke Company, a corporation, was indebted to the employees mentioned and enumerated in the first count hereof and in the amounts therein mentioned for work and labor done and services rendered in and about the mining of coal and the manufacturing of coke at its coal and coking plants situated at Keokee in Lee County, Virginia, and being so indebted to said employees as aforesaid, the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised to pay said employees and each of them the full amount and value of the labor which said employees had done and performed for it whenever thereunto afterwards requested. And the said employees and each of them afterwards, to-wit, on the — day of —— 1909, sold and transferred said indebtedness of the said Keokee Coal & Coke Company to the said plaintiffs, and in consideration thereof the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised said plaintiffs to pay them the said sums of money whenever thereunto afterwards requested which said sums of money amounted in the aggregate to $—.

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And for this, also, to-wit, that on the — day of —— 1909, in the said County of Lee, the said defendant was justly indebted to the parties and persons enumerated in the first count hereof and in the various and respective amounts therein named, its employees, for work and labor done and services rendered to the said defendant in and about the mining of coal and the manufacturing of coke at their

coal and coking plants situated at Keokee in Lee County, Virginia, at its special instance and request, and being so indebted to the said employees the said defendant, the Keokee Coal & Coke Company, incorporated, at its said Keokee operation in Lee County, Virginia, issued and delivered to each of said employees a paper commonly called scrip for the amount of his said labor, which is in the shape of an order and reads as follows: "Please pay to bearer, in merchandise only, from your store at Keokee, to the value of attached coupon not to exceed amount shown at left and charge the full amount shown herein to my account." And each of the aforesaid employees of the said defendant afterwards, to-wit, on the — day of ——, 1909, sold and transferred and delivered their said several respective papers commonly called Scrip to the said plaintiffs while said defendant was so indebted to them, the said employees as aforesaid, by means whereof the said defendant became indebted to the said plaintiffs in a sum equal to the aggregate amount of said papers commonly called scrip, which in the whole amounted to the sum of $—, the value of work done and labor performed for said defendant at its special instance and request by said employees as aforesaid and being so indebted to the said plaintiffs the said defendant afterwards, to-wit, on the — day of — —, 1909, agreed, undertook and faithfully promised said plaintiffs to pay them said several sums of money whenever thereunto afterwards requested.

Yet the said defendant, not regarding its several promises and undertakings aforesaid, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do, but to pay the same or any part thereof to the said plaintiffs, the said defendant hath hitherto wholly refused and still doth refuse and neglect so to do, to the damage of the said plaintiffs $300.00. Therefore they bring their suit.

J. C. NOEL,
DUNCAN & CRIDLIN,
P. Q.

21 *Defendant's Special Plea.*

Lee Circuit Court.

W. W. TAYLOR SONS & WITT, Plaintiff,
vs.
KEOKEE COAL & COKE COMPANY, Defendant,

and

W. W. TAYLOR SONS & WITT, Plaintiff,
vs.
KEOKEE CONSOLIDATED COKE COMPANY, Defendant.

The defendant the Keokee Consolidated Coke Company by its attorney comes and says that the whole of the plaintiff's supposed

cause of action herein should be against it, that the Keokee Coal & Coke Company was a foreign Corporation organized and existing under the laws of the State of New Jersey and the said Company was before the institution of this action dissolved by action of its stockholders and officers in accordance with the laws of New York, and its certificate of dissolution was on the — day of January, 1910, filed with the State Corporation Commission of Virginia and on said last named date a certificate of dissolution was issued by the said Commission. It, therefore, says that there is not and was not at the time of the bringing of these suits, any such corporation as the Keokee Coal & Coke Company. It says that it, the said Keokee Consolidated Coke Company succeeded to all the rights and became subject to all the liabilities of said Keokee Coal & Coke Company in and about the matters involved herein, and that whatever right of action, if any, the plaintiffs have in the premises, they have against your defendant alone.

22 Therefore defendant moves the court to consolidate the said two causes of action and to require the plaintiffs hereafter to proceed solely against your defendant, and this the defendant is ready to verify.

And at another day, to-wit:

VIRGINIA:

At a Circuit Court Continued and Held for Lee County at the Courthouse thereof, on Friday, the 16th Day of September, 1910.

W. W. TAYLOR SONS & WITT, Plaintiff,
vs.
KEOKEE CONSOLIDATED COKE COMPANY, Defendant,

and

W. W. TAYLOR SONS & WITT, Plaintiff,
vs.
KEOKEE COAL & COKE COMPANY, Defendant.

This day came the parties by their counsel and by agreement of counsel and pursuant to the plea filed in these causes by the Keokee Consolidated Coke Company at a former term of this court, it is ordered that these two causes be consolidated and be proceeded against in the name of said Keokee Consolidated Coke Company as the only defendant, and thereupon the defendant pleaded the general issue of non-assumpsit and issue was joined thereon.

And thereupon the parties hereto by their counsel filed a writing setting forth an agreed statement of facts which are the only facts to be considered in this cause and both parties waived a jury

23 and submitted to the court the decision of all questions of law and fact upon the said agreed statement of facts and the pleadings herein, the defendant by counsel contending that to grant

a judgment for money upon the scrip mentioned and set out in the declarations herein as the basis of the cause of action herein violates the constitution of the State of Virginia and the constitution of the United States. And the court having heard argument of counsel and being fully advised, doth over-rule the contention of the defendant and gives judgment for the plaintiff for the amount of the scrip sued on and set out in the declarations herein; it is, therefore, considered by the court that the plaintiffs recover of the defendant the sum of $184.05, with interest from 1st day of January, and his costs herein expended for which execution shall issue to which judgment of the court the defendant by counsel excepted but the court over-ruled said exceptions and gave judgment as aforesaid, and the defendant tendered its bill of exceptions which was signed and sealed by the court and made a part of the record.

Memoranda.

The defendant, the Keokee Consolidated Coke Company, feeling itself aggrieved by the foregoing judgment rendered against it, and having signified to the court its intention to apply to the Supreme Court of Appeals of Virginia for a writ of error to the said judgment, it is therefore ordered that this judgment be suspended for the space of 90 days conditioned upon the defendant or some one for it, executing before the Clerk of this Court, within twenty days from this date, a suspending bond conditioned according to law in the penalty of $100.00.

24 Lee Circuit Court.

Defendants' Bill of Exceptions.

Be it remembered that upon the trial of this cause the plaintiffs and defendants by their counsel filed a writing setting forth an agreed statement of facts in this cause which is in the words and figures following:

Lee Circuit Court.

W. W. TAYLOR SONS & WITT
vs.
KEOKEE CONSOLIDATED COKE COMPANY.

W. W. TAYLOR SONS & WITT
vs.
KEOKEE COAL & COKE COMPANY.

Agreement of Counsel.

By their counsel in these causes now pending in the circuit court of Lee County, Virginia, it is agreed:

(1) That the causes be consolidated and hereafter prosecuted

against the Keokee Consolidated Coke Company, Incorporated, as the only defendant, pursuant to the pleas filed herein at the last May term of Court.

(2) That the declarations herein correctly set out the names of the parties to whom the scrip of the defendant company was issued and the amounts thereof; that said scrip was issued in the due course of business at the defendant company's plant at Keokee, Lee County, Virginia, between the dates of —— —, ——, and —— — ——; and that no part of the several items of scrip mentioned in the said declarations has been paid by the defendant company, or any
25 one for it since the same was issued, either in money or merchandise, but that none of said scrip has ever been presented for redemption by defendant Company in merchandise, and no request for the redemption in merchandise has been at any time made upon the defendant Company by the holder or holders of said scrip, but that payment in money had been demanded at and after the next pay day after the issuance of said items of scrip.

(3) Attached hereto, and marked Exhibit "A" is a sample of the scrip in controversy, which is the same or substantially the same as all the separate scrip items sued on. This scrip consists, as is shown by said Exhibit, of a detachable, perforated slip attached to stub and bound in a book like an ordinary bank check book of large size, in the center of which slip are the following words, to-wit:

Keokee Consolidated Coke Company, Keokee, Va., Incorporated.

Keokee Operation.

Please pay to bearer, in merchandise only, from your store, at Keokee, to the value of attached coupons, not to exceed amount shown at left and charge full amount shown hereon to my account.

—— ——.

By —— ——.

Date —— —, 191-."

At the left of the aforesaid words are the figures "$2.00" and the words "Two Dollars," under which is the serial number of the slip, which corresponds to stub number. Around the border of this slip are various figures with letter "c" thereafter, indicating cents, which add up to total of Two Dollars in the sample given, or in
26 other cases the total of the amount named at the left on the slip. The custom of the defendant company since the beginning of its operation in Lee County in 1906, until the present time, has been, and is, to issue to its employees these slips, commonly known as scrip as an advance in the payment of monthly wages before or between regular pay days. When the employee applies for scrip, he either signs his name on the face of this slip, or it is done by the scrip clerk in the presence of the employee and at his request, in which case the scrip clerk signs his own name or initials under the name of the applicant on the line shown by the words "By —— ——," and the date is entered on the line on the left and below. The account of the employee is then charged on the books of the company with the full amount of scrip thus issued and the

employee or bearer is authorized to present this scrip at the Company's Commissary and obtain merchandise thereon at the usual price and in the ordinary course of sales at the commissary, not to exceed the amount shown on the face of the slip. The amount actually taken up by the employee on any occasion when he makes a purchase upon account of said scrip is punched by the Clerk of the Commissary who sells to such employee, and this continues until the full amount of the particular piece of scrip is punched, when the slip is turned in to the Company and cancelled. The defendant Company has never redeemed any of its scrip in money, (but has always redeemed the same in merchandise when requested if same was in store) which is true of all the scrip sued on in this case.

(4) The defendant Company has at all times since the beginning of its operation in Lee County had one regular payday each
27 month to-wit, the first Saturday after the 15th of each month. On the said payday settlement is made in full with each of its employees and a statement is given the employee in writing which shows his total earnings for the last preceding calendar month and the total amount of debits against him, and the balance due is paid in cash, each employee being handed an envelope giving a statement of his account, and containing in cash the balance due after all deductions.

The foregoing manner of settlement with its employees was in use at the time when each of the parties to whom scrip was issued, and is shown by the declarations herein, began to work for defendant company, and continued from thence to the present time, and such mode of payments was known to each of the said parties and was acquiesced in by them.

(5) It is further agreed that the defendant company has at all times since the issuance of the first piece of scrip involved herein to the present time maintained a commissary at its Keokee plant in Lee County, which contains a general line of merchandise, and that it has all times been willing, ready and able to redeem any and all of the scrip sued on herein in merchandise at the usual and prevailing prices at its said store, and that it is not indebted and was not at the time of the bringing of these suits indebted to any of the parties named in the declaration herein other than on account of the scrip mentioned and set forth herein, which scrip was issued to the said respective parties in the payment of labor performed by each respectively, and at the request of each; and that the plaintiffs herein acquired the said scrip from the said respective parties for value in the ordinary course of business.

28 (6) This agreement of facts constitutes all of the evidence on both sides of this controversy, and it is agreed all matters of law and fact shall be submitted upon the pleadings herein and this agreement of facts for decision.

(Signed) C. T. DUNCAN AND
J. C. NOEL,
For Plaintiffs.
PENNINGTON BROS. AND
IRVINE & MORISON,
For Defendant.

Which agreed statement of facts contained all the evidence in the cause and both parties having waived a jury and submitted all questions of law and fact to the court, the court thereupon gave judgment for the plaintiffs, to which action of the court the defendant excepts and moved the court to give judgment for the defendant on the ground that the judgment in favor of the plaintiffs was contrary to the law and evidence, but the court overruled the motion of the defendant and gave judgment for the plaintiffs, to which action of the court the defendant excepted and presented this its bill of exceptions which is signed and sealed by the court and made a part of the record.

(Signed) H. W. A. SKEEN. [SEAL.]

VIRGINIA,
Lee County, To wit:

I, H. C. T. Ewing, Clerk of the Circuit Court of Lee County, do hereby certify that the foregoing is a true and perfect transcript and copy of the record of the law cause of W. W. Taylor Sons & Witt against Keokee Consolidated Coke Company in the Circuit Court of Lee County, Virginia, and I further certify that
29 the plaintiffs' counsel in said cause had notice of the application by defendant's counsel for this copy to be made by the undersigned.

Given under my hand this the 29th day of August, 1911.

H. C. T. EWING, *Clerk.*

Clerk's Fee for copy $5.00.

30 VIRGINIA:

In the Supreme Court of Appeals, Held at the Library Building, in the City of Richmond, on Wednesday, the 29th Day of November, 1911.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff in Error,
against
W. W. TAYLOR SONS & WITT, Defendant in Error.

This day came the plaintiff in error, by counsel, and presented to the court its petition under section 3466 of the Code, praying for a writ of error to a judgment rendered by the circuit court of Lee County, which petition was refused by the Judges in vacation; but because the court here is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

A copy,
Teste:

H. STEWART JONES, *C. C.*

31 VIRGINIA:

In the Supreme Court of Appeals, Held at the Library Building, in the City of Richmond, on Friday, the 12th Day of January, 1912.

KEOKEE CONSOLIDATED COKE COMPANY, Appellant,
against
W. W. TAYLOR SONS & WITT, Appellees.

From the Circuit Court of Lee County.

On September 13th, 1911, the ap*p*ellant, Keokee Consolidated Coke Company, a corporation, presented its petition, accompanied by a transcript of the record, to James Keith, President and one of the Judges of this Court, praying a writ of error to the judgment of the circuit court of Lee County, rendered on the 16th day of September, 1910, in the cause at law then therein depending of W. W. Taylor, Sons & Witt against Keokee Consolidated Coke Company, whereupon the said James Keith, President and Judge as aforesaid, and also Judges John A. Buchanan, Stafford G. Whittle and George M. Harrison, endorsed upon the said petition their refusal of the writ of error thereon; and thereupon at the November term, 1911, of this court came the said appellant, Keokee Consolidated Coke Company and presented the said petition to this Court under Section 3466 of the Code, this being the next term of the Court after the said petition was presented in vacation, as aforesaid; but, the court not being advised of its judgment to be given in the premises, time was taken to consider the same.

And now at this day, the Court having maturely considered the said petition and the transcript of the record accompanying the same, and being of opinion that the judgment complained of i*f*
32 plainly right, doth reject said petition, and it is therefore ordered that the said writ of error prayed for in said petition be, and the same is, hereby refused.

A copy,
Teste:

H. STEWART JONES, *C. C.*

33 STATE OF VIRGINIA,
Supreme Court of Appeals, ss:

I, J. M. Kelly, Clerk of said Court, hereby certify that the foregoing pages, numbered from 1 to 32 inclusive, are a true, full and complete transcript of the record of the proceedings in the cause of Keokee Consolidated Coke Company against W. W. Taylor Sons & Witt, as same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Wytheville, Virginia, this August 26, 1912.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia.

34 STATE OF VIRGINIA,
Supreme Court of Appeals, ss:

I, James Keith, one of the Judges and President of the Supreme Court of Appeals of Virginia, do hereby certify that the foregoing attestation made by J. M. Kelly, the Clerk of the said Court at Wytheville, Virginia, is in due form, and that the foregoing is his true and genuine signature.

Given under my hand and seal this the 29th day of August, 1912.

JAMES KEITH, [SEAL.]
President Supreme Court of Appeals of Virginia.

35 SUPREME COURT OF APPEALS,
State of Virginia, ss:

I, J. M. Kelly, Clerk of the Supreme Court of Appeals of Virginia, do hereby certify that the Honorable James Keith, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, one of the Judges and President of the Supreme Court of Appeals of the State of Virginia, duly commissioned and qualified.

Witness my hand and seal of said Court this the 31st day of August, 1912.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia,
at Wytheville, Virginia.

36 In the Supreme Court of Appeals of Virginia.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff in Error,
vs.
W. W. TAYLOR SONS AND WITT, Defendants in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Appeals of Virginia.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, the Keokee Consolidated Coke Company, respectfully represents that W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor Sons and Witt, heretofore instituted an action of assumpsit against your petitioner in the Circuit Court of Lee County, Virginia; that on the 16th day of September, 1910, the said Circuit Court of Lee County, in the suit aforesaid, rendered judgment against your petitioner in favor of the said W. W. Taylor, Sons and Witt, for the sum of $184.05, with interest from January 1st, 1910, and the costs of said suit; that thereafter, to-wit, on the 13th day of September, 1911, your petitioner filed in this Honorable Court its petition for a writ of error and supersedeas in the said cause,

together with a transcript of the Record thereof; and that on the 12th day of January, 1912, this Honorable Court entered an order refusing to grant the writ of error prayed for in the said petition, on the ground that the judgment complained of was plainly right.

Your petitioner says that there is manifest error in the action of this Honorable Court in refusing to grant the said writ of
37 error and in not reversing the said judgment of the said Circuit Court of Lee County, and it now files herewith in the Clerk's Office of this Honorable Court an assignment of errors, and now offers to give such supersedeas bond as may be required, with good and sufficient sureties, conditioned as required by law, and prays a writ of error be granted it from the Supreme Court of the United States to the Supreme Court of Appeals of Virginia, commanding that the Record in the said cause be certified to the said Supreme Court of the United States and that a citation issue as provided by law, and that the judgment of this court in refusing to grant the said writ of error be reversed and annulled, and that the aforesaid judgment of the Circuit Court of Lee County, be likewise reversed and annulled, and that all proceedings in the said cause be stayed until said errors shall have been heard and determined.

Respectfully,

KEOKEE CONSOLIDATED COKE COMPANY.
By R. T. IRVINE,
J. F. BULLITT,
Attorneys.

Writ of error allowed upon the execution of bond by the Keokee Consolidated Coke Company, or someone for it, in the sum of Five Hundred Dollars; said bond, when approved, to act as a supersedeas.

Dated on the 25th day of September, 1912.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

A copy.
Teste:
J. M. KELLY,
Clerk Sup. Ct. of Appeals of Va.

38 In the Supreme Court of Appeals of Virginia.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff in Error,
vs.
W. W. TAYLOR, SONS AND WITT, Defendants in Error.

Assignment of Errors.

The Keokee Consolidated Coke Company, plaintiff in error in the above styled cause, states that there is manifest error on the face of the Record therein in that it therein appears that the action of the Circuit Court of Lee County, in rendering judgment against

plaintiff in error, was based upon the provisions of a certain Act of the General Assembly of Virginia, entitled "An Act to amend and re-enact Section 3, of Chapter 391 of the Acts of 1887, entitled an Act to secure to operatives and laborers engaged in and about coal mines, manufactories of iron and steel, and all other manufactories, the payment of their wages at regular intervals, and in lawful money of the United States," approved February 13th, 1888, the third section whereof, reads as follows, to-wit:

"§ 3. That from and after the passage of this act, it shall not be lawful for any person, firm, company, corporation, or association, engaged in the business aforesaid, their clerk, agent, officer, or servant in this state, to issue for the payment of labor, any order, or other payment whatever, unless the same purports to be redeemable for its face value in lawful money of the United States, made payable on demand and without condition, to employee or bearer, bearing interest at legal rate, and redeemable by the person, firm, company, corporation, or association giving, making or issuing
39 the same; and any person, firm, company, corporation, or asciation, engaged in the business aforesaid, their clerks, agents, officers, or servants, who shall issue for payment of labor any paper or order, other than the one herein specified, in violation of this section, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars in the discretion of the Court."

And it is likewise manifest that this Honorable Court in refusing to grant a writ of error to the judgment of the said Circuit Court of Lee County likewise based its action upon the said Act of the General Assembly of the State of Virginia.

But plaintiff in error is advised and charges that the said Act of the State of Virginia is repugnant to the Constitution of the United States, and particularly to the Fourteenth Amendment of the said Constitution, and that the said Act of Virginia is, therefore, null and void; and that the said Circuit Court of Lee County committed error in not so holding, and that this Honorable Court likewise committed error in not so holding and in not granting the said writ of error to the aforesaid judgment of the Circuit Court of Lee County.

KEOKEE CONSOLIDATED COKE COMPANY.
By R. T. IRVINE,
J. F. BULLITT.
Attorneys for Keokee Consolidated Coke Company.

A copy.
Teste:
J. M. KELLY,
Clerk Sup. Ct. of Appeals of Va.

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Ap-

peals of Virginia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Keokee Consolidated Coke Company and W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor, Sons and Witt, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of
41 a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Keokee Consolidated Coke Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 25" day of September, in the year of our Lord one thousand nine hundred and Twelve.

STANLEY W. MARTIN,
Clerk of the District Court of the United States
for the Western District of Virginia.
By C. C. COCHRAN,
Deputy Clerk.

Allowed by

JAMES KEITH,
President of the Supreme Court
of Appeals of Virginia.

Filed Sept. 26, 1912.
Teste:

J. M. KELLY,
Clerk Sup. Ct. of Appeals of Va.

42 UNITED STATES OF AMERICA, *ss:*

To W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, Partners in Trade Under the Firm Name and Style of W. W. Taylor, Sons and Witt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Appeals of Virginia wherein the Keokee Consolidated Coke Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 25th day of September, in the year of our Lord one thousand nine hundred and twelve.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Attest:

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk Sup. C't of Appeals of Va.

43 Service of the within citation is hereby accepted for each and all of the defendants in error on this the 30 day of Sept., 1912.

C. T. DUNCAN,
Attorney for Defendants in Error.

44 Know all men by these presents, That we, A. H. Reeder, R. T. Irvine and J. F. Bullitt are held and firmly bound unto W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor Sons and Witt, in the full and just sum of Five Hundred Dollars ($500.00) *Dollars,* to be paid to the said W. W. Taylor Sons and Witt, their certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 25th day of September, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately in the Supreme Court of Appeals of Virginia in a suit depending in said court, between the Keokee Consolidated Coke Company, Plaintiff in Error, and the said W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor Sons and Witt, defendants in error, a judgment was rendered against the said Keokee Consolidated Coke Company and the said Keokee Consolidated Coke Company having obtained a writ of error and filed a copy thereof in the Clerk's Office

of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said W. W. Taylor, Isaac Taylor, James Taylor and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor Sons and Witt, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Keokee Consolidated Coke Company shall prosecute said writ
45 of error to effect, and answer all damages and costs if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

A. H. REEDER. [SEAL.]
W. T. IRVINE. [SEAL.]
J. F. BULLITT. [SEAL.]

Sealed and delivered in the presence of—
GEO. L. TAYLOR.

Approved by—
JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Filed September 26th, 1912.
Teste:
J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia.

A copy.
Teste:
J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia.

46 *Return to Writ of Error.*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

Witness my hand and the seal of the Supreme Court of Appeals of Virginia, on this the 24th day of October, 1912.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk of the Supreme Court of Appeals of Virginia.

Endorsed on cover: File No. 23,411. Virginia Supreme Court of Appeals. Term No. 372. Keokee Consolidated Coke Company, plaintiff in error, vs. W. W. Taylor, Isaac Taylor, James Taylor, and S. T. Witt, partners in trade under the firm name and style of W. W. Taylor, Sons & Witt. Filed October 31st, 1912. File No. 23,411.

12

Office Supreme Court, U. S.
FILED
APR 20 1914
JAMES D. MAHER
CLERK

In the Supreme Court of the United States.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFF IN ERROR,

vs.

W. W. TAYLOR, ISAAC TAYLOR, JAMES TAYLOR AND S. T. WITT, PARTNERS IN TRADE UNDER THE FIRM NAME AND STYLE OF W. W. TAYLOR, SONS & WITT, DEFENDANTS IN ERROR.

No. 372.

IN ERROR TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR.

R. T. IRVINE,
BULLITT & CHALKLEY,
Counsel.

Appeals Press, 21 N. 12th St., Richmond, Va.

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In the Supreme Court of the United States.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFF IN ERROR,

vs.

W. W. TAYLOR, ISAAC TAYLOR, JAMES TAYLOR AND S. T. WITT, PARTNERS IN TRADE UNDER THE FIRM NAME AND STYLE OF W. W. TAYLOR, SONS & WITT, DEFENDANTS IN ERROR.

No. 372.

IN ERROR TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR.

I.

COURT PROCEEDINGS.

This was an action of assumpsit brought in the Circuit Court of Lee county, Virginia, by W. W. Taylor, Sons &

Witt against the Keokee Consolidated Coke Company on certain store orders, or "scrip," as it is called, given by the Keokee Consolidated Coke Company to its employees and assigned by them to W. W. Taylor, Sons & Witt. (Record p. 8.)

There was also a second declaration of like character filed at the same time by the same plaintiffs against the Keokee Coal and Coke Company. (Record page 10.)

By plea filed by the defendant, the Keokee Consolidated Coke Company, it appeared that the Keokee Coal and Coke Company had been dissolved and that the Keokee Consolidated Coke Company had assumed all the liabilities of the Keokee Coal and Coke Company. (Record page 13.) It was, therefore, ordered by the court that the two cases be consolidated and proceeded with against the Keokee Consolidated Coke Company as the only defendant.

The facts were agreed upon, and the case was submitted to the court upon the law and the facts, without the intervention of a jury. (For the agreed facts, see record page 14.)

The federal question—that is, that the act of the legislature of Virginia, which will hereinafter be set forth, was in violation of the Constitution of the United States—was distinctly made in the court below, as shown by the judgment of the court, wherein the court said:

> "And thereupon the parties hereto, by their counsel, filed a writing setting forth an agreed statement of facts, which are the only facts to be considered in this cause, and both parties waived a jury and submitted to the court the decision of all questions of law and fact upon the said agreed statement of facts and the pleadings herein, the defendant, by counsel, contending that to grant a judgment for money upon the scrip mentioned and set out in the

declarations herein as the basis of the cause of action herein violates the Constitution of the state of Virginia *and the Constitution of the United States.*" (Record page 13.)

The court, however, overruled the contention of the defendant, and gave judgment for the plaintiff for the amount of scrip sued on, namely, $184.05, with interest from January 1st, 1910.

The defendant, the Keokee Consolidated Coke Company, thereafter applied to the Supreme Court of Appeals of Virginia for a writ of error to the said judgment. The federal question was again made before the Supreme Court of Appeals of Virginia, as will be seen from the petition for the writ of error, wherein petitioner said: "The act violates the Virginia Bill of Rights, which provides that no man shall be deprived of his liberty except by the law of the land. *It also violates the fourteenth amendment to the Constitution of the United States.*" (Record page 4.) The petition for writ of error was presented to the Supreme Court of Appeals on September 13th, 1911, and was on January 12th, 1912, refused, as appears from the record, page 18. The defendant, the Keokee Consolidated Coke Company, thereupon applied to the Supreme Court of Appeals of Virginia for a writ of error from the Supreme Court of the United States to the said Supreme Court of Appeals of Virginia, which writ was granted by James Keith, president of the Supreme Court of Appeals of Virginia, on September 25th, 1912. (Record page 20.)

From the assignment of errors (record page 20) the court will see that the plaintiff in error insists that a certain act of the General Assembly of Virginia, entitled "An act to amend and re-enact section 3 of chapter 391 of the Acts of 1887, entitled 'An act to secure to operators and laborers engaged in and about coal mines, manufactories

of iron and steel, and all other manufactories, the payment of their wages at regular intervals, and in lawful money of the United States,'" approved February 13th, 1888, upon which the decisions of the lower court and the Supreme Court of Appeals of Virginia were based, is repugnant to the Constitution of the United States, and particularly to the fourteenth amendment of the said Constitution, and that the said act is therefore null and void; and that the said Circuit Court of Lee county committed error in not so holding, and that the Supreme Court of Appeals of Virginia likewise committed error in not so holding and in not granting the writ of error to the said judgment of the Circuit Court of Lee county.

This is the only question for decision.

II.

The Facts.

For the facts, see agreement of counsel, record page 16. The material part of the facts to be noticed are briefly as follows, namely: That none of the scrip had ever been paid either in money or merchandise, but that none thereof had ever been presented for redemption to the defendant company in merchandise, and no request for redemption in merchandise had at any time been made by any of the holders of the scrip, but that payment in money had been demanded at and after the next pay-day after the issuance of said scrip.

That the scrip consists of detachable perforated slips attached to stubs and bound in a book like an ordinary bank check book of large size, in the center of which slips are the following words, to-wit:

"Keokee Consolidated Coke Co., Keokee, Va.
Incorporated.

Keokee Operation.

Please pay to bearer, in merchandise only, from your store, at Keokee to the value of attached coupons, not to exceed amount shown at the left, and charge full amount shown hereon to my account.

By.....

Date....., 191..."

At the left of the aforesaid words are the figures $2.00" and the words "Two Dollars," under which is the serial number of the slip, which corresponds to the stub number. Around the border of the slip are various figures with letter "c" thereafter, indicating cents, which add up the total of two dollars in the sample given, or in other cases the total of the amount named at the left of the slip.

That the custom of the defendant company since the beginning of its operations in Lee county, in 1906, had been to issue to its employees these slips, commonly known as scrip, as an advance in the payment of monthly wages, before or between regular pay-days; that when an employee applied for scrip, he either signed his name on the face of the slip or it was done by the scrip clerk in the presence of the employee and at his request, in which case the scrip clerk signed his own name or initials under the name of the applicant on the line shown by the words "By....."

That the account of the employee would then be charged on the books of the company with the full amount of the scrip issued, and the employee, or bearer, would be authorized to present the scrip at the company's commissary and obtain merchandise thereon at the usual prices, not to exceed the amount shown on the face of the slip, the amount

actually purchased being punched upon the slip by the clerk as sales were made to the employee.

That the defendant company had never redeemed any of its scrip in money; that the defendant company had always had one pay-day each month, to-wit, the first Saturday after the fifteenth of each month, at which time it settled in full with each employee, the balance due such employee being paid in cash, and that this method of payment was known to all parties and they acquiesced therein.

III.

ARGUMENT.

FIRST. *The Virginia act complained of is repugnant to the first section of the fourteenth amendment of the Constitution of the United States, because it is class legislation, and because it seeks to deprive certain citizens of their liberty and property without due process of law.*

The first, second and third sections of the act are the only sections bearing upon the facts in this case. They are as follows:

> "(1) All persons, firms, companies, corporations or associations in this commonwealth, engaged in mining coal, ore or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employees as provided in this act.
>
> (2) All persons, firms, companies, corporations, or associations in the business aforesaid, shall settle with their employees at least once in each month any pay them the amounts due them for their work

or services in lawful money of the United States or by the cash order as described and required in section three of this act: provided, that nothing herein contained shall affect the right of an employee to assign the whole or any part of his claim against his employer.

(3) That from and after the passage of this act it shall not be lawful for any person, firm, company, corporation, or association engaged in the business aforesaid, their clerk, agent, officer or servant, in this state to issue for payment of labor any order or other payment whatever unless the same purports to be redeemable for its face value in lawful money of the United States made payable on demand and without condition to employee or bearer, bearing interest at legal rate, and redeemable by the person, firm, company, corporation, or association giving, making or issuing the same; and any person, firm, company, corporation or association engaged in the business aforesaid, their clerks, agents, officers or servants, who shall issue for payment of labor any paper or order other than the one herein specified in violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars in the discretion of the court."

(See Pollard's Virginia Code, section 3657-d.)

The court will see that the act applies only to persons, firms, companies, corporations or associations "engaged in mining coal, ore or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing."

We insist that this is class legislation, because the act does not apply to *all* employers of labor. The Virginia

statute was taken from the West Virginia statute, and the title and provisions of the two acts are exactly the same, as appears from the decision of the Supreme Court of Appeals of West Virginia in the case of *State* v. *Goodwell, et al.*, 10 Southeastern, 285-286. The West Virginia court held the act unconstitutional on two grounds, namely:

(1) Because it was class-legislation, and therefore repugnant to the first section of the fourteenth amendment to the Constitution of the United States; and

(2) Because the act deprived certain citizens of their liberty and property without due process of law, and was for that reason also contrary to the said section.

On the proposition that the act was class legislation the court said:

> "The main question argued before this court is whether or not the said statute is unconstitutional, the counsel for the plaintiffs in error contending that it is unconstitutional and void, and the attorney-general insisting that it is a proper exercise of the police power, and, therefore, not unconstitutional and void. It will be observed that this statute applies to certain specified classes of persons, firms, companies, corporations and associations and none others. It is by its terms limited to persons, corporations, etc. engaged in mining coal or other minerals, or any kind of manufacturing. While these terms include not only all persons engaged in mining coal and other minerals, and all persons engaged in manufacturing iron and steel, but all persons engaged in any kind of manufacturing, such as the shoemaker, the cigarmaker, the undertaker, the distiller, the brickmaker, the jeweler, the weaver, the milliner, the dairyman and the miller, it does not include the wholesale merchant with his

hundreds of clerks and agents, the rail-construction companies, or railroad companies, with their thousands of employes. The propriety, or necessity, if such exists, for applying the provisions of the statute to these latter is equally as great, if not more so, as it is to any of the former. The rights and privileges of certain specified employers are abridged, while others of the same class are left free. By the first section of the fourteenth amendment of the Constitution of the United States all persons born or naturalized in the United States are made citizens thereof; and it there declares that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'

On the second proposition the court said:

"The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder him from employing these in what manner he may think proper, without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment both upon the just liberty and rights of the workman and his employer, or those who might be disposed to employ him, for the legislature to interfere with the freedom of contract between them; as such interference hinders the one from working at what he thinks proper, and at the same time prevents the other from employing whom he chooses. A person living under the protection of this government has the right to adopt and fol-

low any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this is the right to labor or employ labor; make contracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue and give evidence; and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes an essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States, and other courts. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 Sup. Ct. Rep. 1064; *Slaughter House cases*, 16 Wall. 36; *Butchers' Union Co.* v. *Crescent City, etc. Co.*, 111 U. S. 746, 4 Sup. Ct. Rep. 652, 6 Meye Fed. Dec., section 1000; In re *Jacobs*, 98 N. Y. 98; *People* v. *Marx*, 99 N. Y. 377, 2 N. E. Rep. 29; Ex Parte Westerfield, 55 Cal. 550; *Ragio* v. *State*, 2 Pickle, 272, 6 S. W. Rep. 401; *State* v. *Divine*, 98 N. C. 778, 4 S. E. Rep. 477."

"The vocation of an employer as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of his property, under the provisions of the constitution. *People* v. *Otis*, 90 N. Y. 48. The right to use, buy and sell property and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all con-

> tracts. 'Questions of power,' says Marshall, C. J., in *Brown* v. *Maryland*, 12 Wheat. 419, 'do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed.' "
>
> (See 10 N. E., page 287).

It was contended in that case that the act was valid as an exercise of police power. In answer to this argument the court said:

> "Our act is almost a literal copy of an act passed by the legislature of Pennsylvania on June 29, 1881. Laws Pa. 1881, page 147. In *Godcharles* v. *Wigeman*, 113 Pa. St. 431, 6 Atl. Rep. 354, the Supreme Court of that state declared the first four sections of that act unconstitutional and void. The court in its opinion says: 'The first, second, third and fourth sections of the act of June 29, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the rights of the employer, and employe. More than this it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void.'

"In *Millett* v. *People*, 117 Ill. 294, 7 N. E. Rep. 631, the Supreme Court of Illinois in a well considered opinion, held unconstitutional and void an act of the legislature of that state which required the owners or operators of mines to provide scales for weighing their coal, and make the weight of coal the basis of the wages of miners. A part of the syllabus is as follows: 'It is not competent for the legislature, under the constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make. Such legislation cannot be sustained as an exercise of the police power.'

In view of what the courts have uniformly held in respect to this class of legislation, it is needless to prolong this discussion. It is a species of sumptuary legislation which has been universally condemned, as an attempt to degrade the intelligence, virtue and manhood of the American laborer, and foist upon the people a paternal government of the most objectionable character, because it assumes that the employer is a tyrant, and the laborer is an imbecile. 'Such legislation' as is well said by the court in re Jacobs, 98 N. Y. 114, 'may invade one class of rights today and another tomorrow; and if it can be sanctioned under the Constitution, while far removed in time, we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages,

> the price of food, the diet and clothing of the people, and a large range of other affairs long since, in all civilized lands, regarded outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric and usually derange the delicate and complicated machinery of industry, and cause a score of ills while attempting the removal of one.'"
>
> (See S. E. Rep., vol. 10, p. 288.)

In the case of *Millett* v. *People*, 117 Ill. 294, 70 N. E. Rep. 631, the Supreme Court of Illinois held unconstitutional and void an act of the state legislature, which required the owners or operators of mines to provide scales for weighing their coal, and making the weight of coal the basis of the wages of miners. The syllabus of the case is in part as follows:

> "It is not competent for the legislature, under the Constitution, to single out owners and operators of coal mines and provide that they shall bear burdens not imposed on other owners of property, or employers of labor, and prohibit them from making contracts, which it is competent for other owners of property or employers of labor to make. Such legislation cannot be sustained as an exercise of the police power."

So in the case of *Braceville Coal Company* v. *People*, 147 Ill. 66, 37 Am. St. Rep. 206, the court held unconstitutional a statute quite similar to the Virginia statute. The court said:

> "If any person is denied the right to contract and acquire property in the manner which he has long enjoyed under the law, and which others are still

allowed by the law to enjoy, he is deprived of both the constitutional right of liberty and property, to the extent he is thus denied the right to contract."

So in the case of *Avent-Beattyville Coal Co.* v. *Commonwealth*, 28 L. R. A. 273, the Kentucky Court of Appeals held unconstitutional a statute similar in all respects to the one now under consideration, as did also the Missouri court in the case of *State* v. *Missouri Tie and Timber Company*, 181 Mo. 536, 80 S. W. Rep. 933.

In *State* v. *Loomis*, 21 L. R. A. 789, 115 Mo. 307, a statute prohibiting mining and manufacturing concerns from issuing for the payment of wages any order or other evidence of indebtedness, payable otherwise than in lawful money of the United States, unless the same is negotiable and redeemable without discount in cash, or in supplies, at the option of the holder, was held void as depriving the employees thereby affected of their liberty without due process of law: Chief Justice Black, in his opinion, says: "We place our conclusion on the broad ground that these sections of the statute are not due process of law within the meaning of the Constitution."

In *Frorer* v. *People*, 141 Ill. 171, 16 L. R. A. 492, the court held that a statute prohibiting persons or corporations engaged in mining or manufacturing, to engage in, or be interested in keeping or controlling any truck, store, shop, or scheme for furnishing supplies or groceries to employes, but which did not apply to those employing laborers in other branches of business was in violation of the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law.

After the decision in the West Virginia case above quoted from, the act was amended so as to make it applicable to *all* companies, or persons employing laborers. After the amendment, the West Virginia court in the case of *Peal*

Splint Coal Co. v. *State*, 17 L. R. A. 385, 36 W. Va. 802, by an equally divided court, sustained the constitutionality of the statute on the ground that it applied to *all* persons engaged in any trade or business, and that, therefore, the element of discrimination was lacking, and they distinguished the case from the prior West Virginia case on this ground.

It is enough for our purposes to rely upon the doctrine of discrimination alone, believing as we do that the vast weight of authority holds all such legislation unconstitutional; but we insist also that the better considered cases likewise hold such legislation void and unconstitutional on the ground that it deprives citizens of the United States of their liberty and property without due process of law.

SECOND. It will be contended by the defendants, however, that the case at bar is controlled by the decision in the case of *Dayton Coal and Iron Co.* v. *Barton*, 183 U. S. 13 (46 L. Ed., page 55). In that case it appeared that the act under consideration (of the legislature of Tennessee) provided:

> "Sec. 1. Be it enacted by the general assembly of the state of Tennessee, that all persons, firms, corporations and companies using coupons, scrip, punch-outs, store orders or other evidences of indebtedness to pay their or its laborers and employees, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe, or *bona fide* holder, in lawful money of the United States: *Provided* the same is presented and redemption demanded of such person, firm, company, or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemp-

tion demanded as aforesaid by such laborers, employes, or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order, or other evidence of indebtedness to such employes, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness: *Provided, further*, said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store, or other repository of such company, firm, person or corporation aforesaid.

Sec. 2. Be it further enacted that any employe, laborer, or *bona fide* holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order, or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her, or their own name an action before any court of competent jurisdiction against such person, firm, corporation, or company, using same as aforesaid, for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

It will be seen that the Tennessee act is quite different from the Virginia act in several particulars, namely:

(1) The Tennessee act is applicable to "all persons, firms, corporations and companies using coupons, scrips, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employes for labor or otherwise."

The Virginia act on the other hand, as before stated, applies to only certain employers of labor and not to others. The question of discrimination, therefore, did not enter into the decision in the Tennessee case.

(2) The Tennessee statute did not undertake to *prohibit* employers of labor from entering into contracts to pay their laborers in merchandise or something other than money, but merely provided that in case such contracts were entered into they should be payable in money upon certain terms and conditions. The Supreme Court of Tennessee emphasizes this fact. It says:

> "There is no prohibition against the issuance of any of the obligations referred to, nor against payment in merchandise or otherwise according to their terms, but only a provision that they shall be paid in money at the election and upon a prescribed demand of the owner. In other words, the effect of the act is to convert into cash obligations such unpaid merchandise orders, etc., as may be presented for money payment on a regular pay-day or as much as thirty days after issuance.
>
> Under the act the present defendant may issue weekly orders for coal, as formerly, and pay them in that commodity when desired by the holder, but instead of being able, as formerly, to compel the holder to accept payment of such orders in coal, the holder may, under the act, compel defendant to pay them in money. In this way and to this extent the defendant's right of contract is affected.
>
> Under the act, as formerly, every employe of the defendant may receive the whole or a part of his wages in coal orders, and may collect the orders in coal, or transfer them to someone else for other merchandise, or for money. His condition is bettered

by the act in that it naturally enables him to get a better price for his coal orders than formerly, and thereby gives him more for his labor; and yet although the defendant may not in that transaction realize the expected profit on the amount of coal called for in the orders, it in no event pays more in dollars and cents for the labor than the contract price.

The scope and purpose of the act are thus indicated. The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him or his *bona fide* transferee, at his election and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employe upon equal ground in the matter of wages, and so far as calculated to accomplish that end, it deserves commendation. Being general in its operation and enforcible by ordinary suit, and being unimpeached and unimpeachable upon other constitutional grounds, the act is entitled to full recognition as the 'law of the land' and 'due process of law,' as to the matters embraced, without reference to the state's police power, as was held of an act imposing far greater restrictions upon the right of contract in the case of *Dugger* v. *Mechanics' & T. Ins. Co.*, 95 Tenn., 245, 28 L. R. A. 796, 32 S. W. 5 and has been previously decided in respect of other limiting statutes therein mentioned. 95 Tenn. 253, 254, 28 L. R. A. 799, 32 S. W. 6, 7."

Now, we submit that it is one thing to say that a person *cannot contract* to pay for labor, or to receive for his labor

anything except money, and quite another thing to say that *if one does contract* to pay for labor in something other than money, or *if one does* contract to take for his labor something other than money, the contract must be fulfilled by the payment of money upon certain reasonable terms and conditions. Even without a statute, it is a common law principle that where one contracts to pay according in goods, wares, or merchandise, and fails to pay according to contract, the payee can bring suit and get a money recovery. The Tennessee statute goes but little farther than this common law principle. It merely in essence provides that if one contracts to take merchandise for his labor he may nevertheless at his option insist upon taking money instead of merchandise. Strictly speaking, we believe this would be an unconstitutional infringement of the *rights of the employer*, if it were not for the fact that it is a valid exercise of the police power; but certainly it is not an infringement of the rights of the *employe*—instead of depriving him of a right it grants to him additional rights. In this respect it is wholly unlike the Virginia statute, because the Virginia statute makes it a penal offense against the employer to agree to pay a laborer in anything but money, and, thereby indirectly takes from the laborer his constitutional right to sell his labor for anything except money.

It will be seen that the Tennessee court upheld the act also on the ground that it was a valid exercise of the police power. The court said:

> "Furthermore, the passage of this act was a legitimate exercise of police power, and upon that ground also the legislation is well sustained. The first right of a state, as of a man, is self-protection, and with the state that right involves the universally acknowledged power and duty to enact and enforce

all such laws not in plain conflict with some provision of the State or Federal Constitution as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.

The act before us is perhaps less stringent than any one considered in any of the cases mentioned. It is neither prohibitory nor penal; not special, but general; tending towards equality between employer and employe in the matter of wages; intended and well calculated to promote peace and good order, and to prevent strife, violence and bloodshed. Such being the character, purpose and tendency of the act, we have no hesitation in holding that it is valid, both as general legislation, without reference to the state's reserved police power, and, also, as a wholesome regulation adopted in the proper exercise of that power."

Now, his honor, Justice Shiras, in delivering the opinion of the court, seems to have based his decision upon this doctrine of the exercise of police power. He said, after quoting the passage above, concerning the police power:

"The Supreme Court of Tennessee justified its conclusions by so full and satisfactory a reference to the decisions of this court as to render it unnecessary for us to travel over the same ground. It will be sufficient to briefly notice two or three of the latest cases.

In *Holden* v. *Hardy*, 169 U. S. 366 (42 L. Ed. 780) 18 Sup. Ct. Rep. 383, the validity of an act of the state of Utah, regulating the employment of workingmen in underground mines, and fixing the period of employment at eight hours per day, was in ques-

tion. There, as here, it was contended that the legislation deprived the employers and employes of the right to make contracts in a lawful way for lawful purposes; that it was class legislation, and not equal or uniform in its provisions; that it deprived the parties of the equal protection of the laws, abridged the privileges and immunities of the defendant as a citizen of the United States, and deprived him of his property and liberty without due process of law. But it was held, after full review of the previous cases, that the act in question was a valid exercise of the police power of the state and the judgment of the Supreme Court of Utah, sustaining the legislation, was affirmed.

Where a contract of insurance provided that the insurance company should not be liable beyond the actual cash value of the property at the time of its loss, and where a statute of the state of Missouri provided that, in all suits brought upon policies of insurance against loss or damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time of issuing the policy the full amount of the insurance, this court held that it was competent for the legislature of Missouri to pass such a law, even though it places a limitation upon the right of contract. *Orient Ins. Co.* v. *Daggs*, 172 U. S. 557, 43 L. ed. 552, 19 Sup. Ct. Rep. 218.

In *St. Louis I. M. & S. R. Co.* v. *Paul*, 173 U. S. 404, 43 L. Ed. 746, 19 Sup. Ct. Rep. 419, a judgment of the Supreme Court of Arakansas sustaining the validity of an act of the legislature of that state, which provided that whenever any corporation or person engaged in operating a railroad should discharge, with or without cause, any employe or ser-

vant, the unpaid wages of any such servant then earned, should become due and payable on the date of such discharge without abatement or deductions was affirmed. It is true that stress was laid in the opinion on the fact that, in the constitution of the state, the power to amend corporation charters was reserved to the state, and it is asserted that no such power exists in the present case. But it is also true that inasmuch as the right to contract is not absolute in respect to every matter, but may be subjected to the restraints demanded by the safety and welfare of the state and its inhabitants, the police power of the state may, within defined limitations, extend over corporations outside of and regardless of the power to amend charters. *Atchison T. & S. F. R. Co.* v. *Matthews*, 174 U. S. 96, 43 L. Ed. 909, 19 Sup. Ct. Rep. 609."

It will thus be seen that every decision quoted by Justice Shiras was based upon the doctrine of the exercise of police power. For this reason we do not think that this decision can be cited as upholding such legislation, *except upon the doctrine of the exercise of police power;* and, as we will hereinafter more fully show, the Virginia act cannot be upheld on any such doctrine.

THIRD. The Virginia act provides that it shall be unlawful to issue "for the payment of labor any order or other payment whatever unless the same purports to be redeemable for its face value in lawful money of the United States made payable on demand and without condition to employe, *or bearer*," etc. The Tennessee act contains no such provision. In other words, under the Virginia act it is unlawful to issue to an employe *a non-negotiable* promissory note in payment for his labor—such note, if issued at all,

must be a negotiable note. Nor could and employer settle with a laborer by giving him a negotiable note payable *sixty days after date*—it must be payable on demand. Again, for instance, under the Virginia act a laborer could not make with his employer an agreement that he would work for a certain length of time at so much a month, and that for his wages the employer would convey to him a house and lot. It is hard to imagine a more unjust infringement of the rights of laborers.

FOURTH. The Tennessee statute expressly provided that an order issued to a laborer should be redeemed by the employer in lawful money of the United States. There is no such provision in the Virginia statute. The second clause of the Virginia statute does provide that laborers shall be paid in lawful money of the United States, but the third clause, with reference to the scrip issued, merely makes it *a penalty* to issue such scrip which is not on its face redeemable in lawful money of the United States. We submit that it is one thing to provide that such scrip *shall be payable in money*, and quite another thing to prohibit the issuing of such scrip, and to provide a penalty against the person issuing the same.

In the one case it may be said that the employer was presumed to know the law, and, therefore, when he issued such scrip under the Tennessee law he impliedly, if not expressly, contracted to redeem the scrip in money under the conditions set forth in the Tennessee act. But no such argument can be made with reference to the Virginia act. It might be conceded, with reference to the Virginia act, that the employer would be liable to the penalty provided by the act, and yet it would not follow that he would be required to redeem the scrip in money. The circuit court and the Supreme Court of Appeals of Virginia in holding the act constitutional, and, also, in rendering a money judg-

ment against the plaintiff in error, in effect, construed the act as if it had provided that such scrip should be redeemable in money. The court thereby made for the plaintiff in error a contract which it, the plaintiff in error, had never entered into. We submit that this was not due process of law.

FIFTH. *The Virginia act cannot be upheld as a valid exercise of the police power.*

On this subject of the police power, one of the latest and best considered cases is the case of *Lockner* v. *New York*, 198 U. S. 45, (49 L. Ed. 937). In that case the court had under consideration an act of the legislature of New York which prohibited an employer in a bakery from requiring or permitting an employee "to work more than sixty hours in one week." The court held that the act was not valid as a labor law pure and simple. The court said:

> "The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the

> welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day, or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground."

The court then proceeds to the question as to whether the act was a valid exercise of the police power, and comes to the conclusion that it was not. The court said:

> "The mere assertion that the subject relates, though but in a remote degree to the public health, does not necessarily render the enactment valid. The act must have a more direct relation as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor." (Page 942.)

Again the court said:

> "On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employes named, is not within that power and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals,

> both employers and employes, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power," etc. (Page 943).

Again, the court said:

> "Those powers," that is, the police powers, "relate to the safety, health, morals and general welfare of the public."

Unless an act does in some effectual manner tend to conserve the *safety, health, morals or general welfare of the public* it cannot be upheld on the ground of the exercise of the police power. The act in question certainly does not in any manner tend to conserve the safety, health or morals of the public, or of any part of the public. Does it tend to conserve the "general welfare" of the public? The Tennessee act before referred to was upheld on the doctrine of the police power, "because his condition (that is the condition of the employe) is bettered by the act, in that it naturally enables him to get a better price for his coal orders than formerly, and thereby gives him more for his labor," and because "the legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure, by enabling him or his *bona fide* transferee, at his election, and at a proper time to demand and receive his unpaid wages in money, rather than in some-

thing less valuable. Its tendency, thought slight it may be, is to place the employer and employee upon equal ground in the matter of wages, and so far as calculated to accomplish that end, it deserves commendation."

And, again, with reference to the Tennessee act the lower court said: "It is *neither prohibitory nor penal; not special but general*, tending towards equality between employer and employe in the matter of wages, intended and well calculated to promote peace and good order, and to prevent strife, violence and bloodshed."

The Virginia act *is prohibitory* and *is penal; is special* and *not general*. Moreover, as before stated, the Tennessee act takes nothing whatever from the laborer, but gives him more than he had before. It may well be said, therefore, that the Tennessee act bettered the condition of the laborer. The Virginia act, on the other hand, while it professes to give the laborer something which he did not before have, takes from him a right which every freeman should value as he would his life or limb, the right to contract with whom and for what he pleases.

Can it really be fairly said that the Virginia act *in any manner* betters the condition of the laborer? Does it better the condition of coal miners, the class of labor in question in this case? It is well known that coal companies universally pay off their miners once a month, or at most twice a month. It is not practicable to pay them oftener than this. It is further well known that a large percentage of coal miners are of the shiftless, thriftless, spendthrift class, and spend all the cash they receive within a very short time after pay-day. Unless they can get credit until the next pay-day, they and their families will necessarily suffer for even the necessities of life. It is, therefore, very important to them, as a class, that they should have some means of obtaining credit. Their employer is the only person to whom they can look for credit. If, how-

ever, the Virginia statute is upheld, it goes without saying that the employer will cease to give his coal miners credit. He will not be able to give them scrip payable in merchandise, without subjecting himself to the penalties of the law. He will have no interest in giving them scrip payable in money, because this would yield him no profit whatever, and would subject him to like annoyance as would a daily instead of a monthly pay-day.

We submit, therefore, that the Virginia act, instead of bettering the condition of the miner, would really make his condition worse. If so, then the act does not in any manner tend to "conserve or promote the safety, health, morals, or general welfare of the public," and cannot be upheld as a valid exercise of the police power.

Respectfully submitted,

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In the Supreme Court of the United States.

W. W. TAYLOR, SONS & WITT, DEFENDANTS IN ERROR.

Ads.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFFS IN ERROR.

and

KELLY-HICKAM COMPANY, DEFENDANTS IN ERROR.

Ads.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFFS IN ERROR.

No. 372

IN ERROR TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR DEFENDANTS IN ERROR

These cases are in the Supreme Court of the United States upon writs of error to judgments of the Supreme Court of Appeals of Virginia affirming, or rather refusing to

grant writs of error to two judgments rendered in the Circuit Court of Lee County upon suits instituted by each of said plaintiffs against the Keokee Consolidated Coke Company. In the Circuit Court of Lee County they were brought on to be heard together, upon an agreed state of facts and were heard by said court on said agreed facts without the intervention of a jury and judgments rendered in favor of the plaintiffs for certain amounts specified in said judgments.. They were suits in assumpsit and to recover the sums of various items or slips of scrip which was in use by the plaintiff, in error, at its coal operations at Keokee, in Lee County, Virginia, and were in the following form:

KEOKEE CONSOLIDATED COKE COMPANY, Keokee, Va
Incorporated
Keokee Operation

Please pay to bearer, in merchandise only, from your store, at Keokee, to the value of attached coupon, not exceeding amount shown at the left and charge full amount shown hereon to my account.

By_____

Date_____

This scrip was sold and assigned to the plaintiffs in said original suits, the defendants in error here, payment of the same was demanded in money and refused by the said defendant, the plaintiff in error here, and judgements were rendered in favor of each of said plaintiffs and it is from these judgements that a writ of error was sought from the Supreme Court of Appeals of Virginia, which was refused and from that action of said court, these writs of error are being prosecuted in the Supreme Court of the United States The plaintiff in error admitted in the statement of facts that it was indebted to the persons who had assigned said scrip or orders as mentioned in the declaration in each of said cases, but contended that it had the right to pay the same in merchandise at its commissary, and denied the asserted right of the plaintiffs below to collect the same in

money or in anything else other than merchandise at the commissary, while upon the other hand the plaintiffs below, defendants in error, claimed that they were entitled to have the same paid in money and vouched in support of their contention the statute of Virginia, being section 3657d of the Code of Virginia, to meet which contention on the part of the defendants in error, the plaintiff in error insisted that said section 3657d was unconstitutional and void because (1) that said statute violates the right of freedom of contract, (2) that it was class legislation, not being applicable to all kinds of contracts and all kinds of labor, but that it singled out the operator and laborers engaged in mining coal, ore, or other mineral, or mining and manufacturing them, or either of them, or manufacturing iron or steel or both, or any other kind of manufacturings, (3) that said statute is in contravention of the Fourteenth Amendment of the Constitution of the United States, and so the issue was joined and judgement rendered denying or over-ruling the defense offered by the defendants below, the plaintiff in error, and judgement was rendered as aforesaid for the amounts mentiond therein.

The court committed no error in thus rendering judgement for the plaintiffs below. There is no force in the argument that this Statute violates the freedom of contract Freedom of contract applies, if it applies with any force at all, to persons who stand upon an equality. This is seldom, if ever, the case, between employer and employee, and especially where one is a coal operator and the other a coal digger.

The very necessity which surrounds and controls one seeking employment, negatives, if it does not destroy, that equality which must necessarily exist between employer and employee, if the much vaunted doctrine of freedom of contract has any force at all. It certainly does not exist between coal diggers and their employers.

There is likewise no merit in the second contention of the plaintiff in error. The object of the statute was to pro-

tect the class of employees mentioned in the statute and to regulate the manner of paying them for their services and it applies to each employer and employee embraced in the enumerated class of employment mentioned in the statute, and there is no discrimination against any employer or employee engaged in any of the udertakings or business mentioned in the statutes, and this is all that is required. This question has been often determined by judicial decisions and while there has been, and perhaps is today, some conflict along this line, it is very small and this statute, or statutes of like character, is maintained by the great weight of authorities, both State and Federal.

See Virginia Developement Company et al Vs. Crozer Iron Company, et al, 90, Va. 126.

This was a carefully considered case in which the constitutionality of Section 2485 of the Code of Virginia was directly attacked. This statute was assailed by the appellants on the ground that it is unequal and partial; that it is special and class legislation; and in conflict with the Fourteenth Amendment of the Constitution of the United States This contention was over-ruled and the words of the court in so over-ruling said contention and sustaining said section are as follows:

> "We hold, therefore, that Section 2485 of the Code is valid and constitutional, that it is not repugnant either to the Fourteenth Amendment, or to anything in the Constitution of Virginia and that both of the supply liens in question are paramount to the deed of trust."

See also Laurence V. Rutland R. Co., A. & E. An cases Vol 13 page 475.

But we are not dependent upon State decisions which are too numerous to mention, but the great trend of the decisions of the Supreme Court of the United States are to the same effect. These cases are so well known to the court that we will only take up time to cite a few of them. (Orient Insurance. Dagg 172 U. S. 557,43 L Ed 552 Slaugh-

ter house cases 83 U. S. 16 L ed. 394.

It is further contended that Section 3657d of the Code of Virginia is unconstitutional, because it seeks to deprive certain citizens of their liberty and property without due pro cess of law. But the principle is well settled that the presumption is always in favor of the validity of a statute if the contrary is not clearly demonstrated. A statute is not to be pronounced void upon the ground of repugnancy to the constitution unless such repugnancy is clear and the conclusion that it exists is inevitable.

26 Am. & Eng. Ency. 2nd Ed. p. 574.

This principle is so well settled and so clearly addresses itself to the broad common sense of the business world, and especially to the enlightened judiciary of the present age, that it would appear hardly necessary to cite authorities. But we will cite a few.

> In the case of Cooper Vs. Talfair, 4th Dal 1st L. Ed. p. 723, Justice Washington speaking for the court says:
>
> "The presumption, indeed, must always be in favor of the validity of laws, if the contrary is not clearly demonstrated."

To the same effect is the decision in Township of Pine Grove Vs. Talcott, 19th Wall. 666; 22nd L Ed. 227-232, in which Justice Swayne speaking for the court uses this strong language.

> "It is an axiom in American jurisprudence That a statute is not to be pronounced to be void unless the repugnancy to the constitution be clear and the conclusion that it exists, inevitable. Every doubt is to be resolved in support of the enactment. The particular clause of the constitution must be specified and the act admit of no reasonable construction in harmony with its menaing."

See also (100 Va. p. 40.)

The statute under consideration is a legitimate exer-

cise of the police power of the state. A good definition of this power of the state is the following:

> "The authority residing in every sovereignty to pass laws for the regulation and government of the state necessary for the public welfare, prosperity, the health, the morals and happiness of its people."

And here again it is likewise well settled that all doubtful questions are to be resolved in favor of the police power exercised or attempted to be exercised by the State for its own protection and the protection, happiness and prosperiy of its people.

The exercise of this power of the State is not limited by the 14th Amendment.

See: 165th U. S. 180, 41 L. Ed. p. 677.
179 U. S. 349, 45th L. Ed. p. 228

The authority which a state has to prohibit, regulate or control the private business of its citizens arises out of its police power, or the power to enact laws pertaining to the public health, public safety, public morals, and the general welfare of the State and its citizens.

As before stated there is no merit in the second contention of the defendant, namely; That the statute under consideration is not applicable, by its terms, to all kinds of contracts, all kinds of business, and all kinds of employees, but that it singles out the operators and laborers engaged in mining coal, ore other minerals, &c. It is not every kind of laborers or employees that need specific protection, but wherever the necessity exhists it is the duty of the State, by proper laws, to afford it. Questions of this kind have frequently arisen and the attention of the legislatures of almost every State in the Union, has, at one time or another been called to it, resulting in the enactment of various laws, many of which have received judicial consideration, and a few of which will be referred to. On the 30th of March, 1896 the Legislature of Utah passed an Act regulating the hours

of the employees in under-ground mines, in smelters and ore reduction work. Section 1 of this act is as follows:

> "The period of employment of working men in all underground mines shall be eight hours per day except in cases of emergency where life or property is in eminent danger.
>
> Section 2. "The period of employment of working men in smelters and all other institutions for the reduction or refining of ores or metals, shall be eight hours per day, except in case of emergency where life or property is in emminent danger."

The validity of this statute was challenged upon the ground of an alleged violation of the 14th Amendmnet to the Constitution; in that it abridged the privileges or immunity of citizens of the United States and deprived both the employer and the laborer of his property without due process of law, and denied to both, the equal protection of the laws. That it abridged the freedom of contract, that it applied only to certain vocations, laborers and employers, &c The constitutionality of this Act was brought directly to the attention of the Supreme Court of the United States in the case of Albert F. Holden Vs. Harvey Hardy, Sheriff. 169 U. S. 366, 42 L. Ed. 780.

Without undertaking to cite or comment extensively upon this decision, we will content ourselves by simply quoting the syllabus.

> (1) The right of contract is subject to certain limitations which the State may lawfully impose in the exercise of its police power.
>
> (2) The protection of health and morals, as well as of the lives, of citizens, is within the police power of the State legislature.
>
> (3) A State statute limiting the period of employment of working men in underground mines, or in smelting, reduction, or refining of ores or metals to eight hours per day, and making its violation a

misdemeanor, is a valid exercise of the police power of the State.

> (4) The fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.

This case is cited with approval in the more recent case of Knoxville Iron Company Vs. Harbison, 183 U. S. 17, 46 L. Ed. 59-61.

It will be seen by reading the opinion of Justice Brown in the above named case that there is a very full review of previous cases and that said opinion upholds to the very fullest extent, said Act and Acts of like character as a valid exercise of the police power of the State.

The case of the St. Louis I. M. & S. Ry. Co. Vs. Paul, 173 U. S. 404, 43 L. Ed. 746, is another vrey instructive case on this kind of legislation. This case sustained the validity of the Act of the Legislature of Arkansas which provided, that if any corporation or person engaged in operating a railroad should discharge with or without cause, any employee or servant, the unpaid wages of such servant then earned, should become due and payable on the date of such discharge without abatement or deduction.

In the Missouri Pacific Railway Company Vs. McKey 127 U. S. 205, 32 L. 107, it is held:

> "Legislation which is special in its character is not obnoxious to the last clause of the 14th Amendment, if all persons subject to it are treated alike, under simliar circumstances and conditions in respect to both the privileges conferred and the liabilities imposed."

In the case of John Hayes Vs. State of Missouri, 120 U. S. 68, 30th L Ed. 578, it was held:

> "The 14th Amendment does not prohibit legislation which is limited in the objects to which it

is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

The case of Francis Barbier Vs. Patrick Connlly 113 U. S. 27, 28th L. Ed. 923:

This case grew out of an ordiance of the city and county of San Francisco, prohibiting the carrying on of public laundries and wash houses within certain prescribed limits of the city and county from ten o'clock at night until six in the morning. Mr. Barbier was convicted of violation of said ordinance and was sentenced to imprisoment in the County jail for five days. Upon habeas corpus proceedings instituted by him he prayed to be released on the ground that said Town ordinance violated the Fourteenth Amendment of the Constitution of the United States, in this that said ordinance discriminated between the class of laborers engaged in the laundry business and those engaged in other kinds of business; that it deprived the petitioner of the right to labor and as a necessary consequence of the right to acquire property. Upon appeal to the Supreme Court of the United States it was held:

"A federal tribunal cannot supervise such regulation; any correction of the action of municipal bodies in such matters can come only from State legislation or state tribunals."

"The Fourteenth Amendment of the U. S. Constitution is not designed to interfere with the power of the State, sometimes termed its "police power," to prescribe regulations to promote the health, peace, morals, education, and good order of the people."

Many other cases of like character and of the same effect might be cited from the United States Reports but we will content ourselves wih the above citations.

We now desire to call the attention of the court especially to the Virginia Developement Company et al Vs. Crozer Iron Company et al, 90th Va. 126. This controversy arose under Section 2485 and 2486 of the Code of Virginia. The validity of these two sections was assailed by the appellant on the ground that they were unequal and partial; that they were special and class legislation; and in conflict with the Fourteenth Amendment of the Constitution of the United States. In the course of his opinion Judge Lewis said:

> "That the statute is special in its character—i. e., confined in its operation, so far as the funishers of supplies are concerned, to those dealing with railway, canal, or other transportation companies or mining or manfacturing companies, chartered under or by the laws of this State, or doing business within its limits, is obvious from its terms, and is not disputed. But it does not follow that because the statute is special it is invalid.. It has been repeatedly decided by the Supreme Court of the United States, in construing the Fourteenth Amendment that it is no objection to a statute that it is special, if all persons subject to it are treated alike under the same condition."

Without quoting further from this case we invite the careful attention of the Court to it and we think it will be found, upon such examination. that President Lewis has so carefully reviewed all the material cases upon the qestion as to leave no doubt of the correctness of his opinion, and as to leave no doubt of what the decision of the court should be upon the questions or issues here presented.

In conclusion, especially of the citation of authority, we can do no better than to invite the attention of the court to Knoxville Iron Company Vs. Samuel Harbison, 183 U. S. 11-13, 46th L. Ed. 55. That case was of like character to the case now at issue, and arose under a statute very much like the Virginia Statute and under facts almost identical with those in the case at bar.

The Knoxville Iron Company had its principal office at Knoxville, Tennessee, where it was engaged in the manufacture of iron. As an incident to its business, said Company was also engaged in mining and selling coal. It seems that said Company had a regular pay day in each month on the Saturday nearest the twentieth day of the month. Upon that day each employe was paid in cash the amount due him, excepting therefrom what might be due from the first day of the month up to said pay day, the said Company thus keeping in arrears with its employees all the time to the extent of their wages for about twenty days of time. But said employees were permitted to collect this sum in coal orders, said Company nearly always having on hand at its Knoxville yard large amounts of coal which it sold to all persons willing to purchase, whether such persons were its employees or the public generally. For some time prior to the filing of the bill and at the time the bill was filed, said Company had been assustomed to accept from its laborers, after work had been performed, orders for coal in the following form:

"Let bearer have ——— bushels of coal and charge to my account.

———————.

The defendant's employees were accustomed to sign orders and in this form they were accepted by a stamp in in these words: "Accepted ————————1889, Knoxville Iron Company."

The plaintiff, Mr. Harbison, purchased 614 of said defendants orders which within 30 days from the issuance of each of said orders, he presented them to the Knoxville Iron Company and demanded that it redeem them in cash, which was refused, and suit was then brought in the Circuit Court of Knox County to enforce the collection of said orders in cash. Judgement was rendered in favor of the Plaintiff which was appealed to the Supreme Court of Tennessee, which court affirmed the decision of the Circuit Court and an appeal was then taken to the Supreme Court of the United

States, where the opinion of the Supreme Court of Tennessee was not only affirmed but it was adopted by Justice Shiras as the opinion of that, the highest court in the land. To this decision we invite the careful consideration of the court and especially do we desire to refer to this paragraph of that opinion, not only as sustaining the validity of such statutes as that of ours, but as showing the high ground upon which said legislation is placed by the highest court of one of our sister states whose opinion was regarded by the Supreme Court of the United States as being of such high character that it was adopted by that august body as its own judgement.

> "Futhermore, the passage of this act was a legitimate exercise of police power, and upon that ground also the legislation is well sustained. The first right of a state, as of a man, is self-protection, and with the state that right involves the universally acknowledged power and duty to enact and enforce all such laws not in plain conflict with some pro vision of the state or Federal Constitution as may rightly be deemed necessary or expedient for the safety, health, morals, comfort, and wellfare of its people."

The Virginia Act, Section 3657d is not only a valid exercise of the police power of the state, but it is one rendered necessary for the protection of that large class of its citizens who are unable by reason of their financial condition and the circumstances surrounding them, to protect themselves. The commissary of the defendant, in some respects, was doubtless for the accommodation of its employees, was, likewise, directly for its own benefit and at which it sold to its employees goods, wares and merchandise at a profit. Whether this profit was large or small, matters not. No proof has yet been taken to show how large this profit was, but it was evident that it was a profit making device, otherwise said Company would not have provided on the face of the orders or scrip furnished by it or its em-

ployees, that they were to be redeemed in merchandise only at its store or commissary. Nor would said Company now refuse to redeem said orders in cash if it was not making a profit on the merchandise. It is seen at a glance that a Company like the defendant, by such a device as that adopted, may and does make a profit, not only on the labor of its employees, but likewise enables itself to make a profit on the method which it adopts of paying these employees for the labor rendered. Hence it follows that Section 3657d, which prohibits the infliction by a Company, of such a probable injustice upon its employees, is not only a proper exercise of the police power of the state, but it is the performance by the state of the highest duty which it owes to that part of its citizens who most need its protection.

Plaintiff in error asserts that the Virginia Statute, 3657d is an exact copy of the West Virginia Statute which in the case of State Vs. Goodwill, 10th S. E. 385-6; 6th L. R. A. P. 621. was held by the Supreme Court of that State to be unconstitutional, because it did not embrace within its terms all kinds of business and all classes of employers and all classes of empoyees. In reply to this we say that the Supreme Court of Appeals of Virginia, which is a court of equal dignity and equal ability, has held in these cases, as well as in various others, that Section 3657d is constitutional and valid, and certainly this holding by the Virginia Court is entitled to as much weight as the holding of the West Virginia court, and, while heretofore stated in these notes, the decisions of the various States of the Union have not been uniform on this question, yet, it is submitted that the great majority of the decisions have upheld statutes such as the Virgnia statute, and the decisions of the Supreme Court of the United States have been uniform in upholding the constitutionality of said statutes.

Plaintiff in error likewise refers to the case of the Peel Splint Coal Company Vs. The State of West Virginia and attempts to show that it was necessary to amend the form-

er statute in order to make it applicable to cases of the kind here in controversy. Under the holding of the Supreme Court of West Virginia, in State Vs. Goodwill supra this was necessary, but under the great weight of authority both State and Federal, this was unnecessary, because as so often determined by State decisions and so uniformly held by Federal decisions all that is necessary to make the Statute valid is, that the statute shall be applicable to all persons coming within its provision.

It is respectfully submitted that the Virginia Statute is not in conflict with the constitution of the state, or of the United States, and that the judgement of the Circuit court, as well as that of the Supreme Court of Appeals of Virginia, is right and should be affirmed by the Supreme Court of the United States.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 372.

Keokee Consolidated Coke Company,
Plaintiff-in-Error,

vs.

W. W. Taylor, Sons & Witt,
Defendants-in-Error.

and

Keokee Consolidated Coke Company,
Plaintiff-in-Error,

vs.

The Kelly-Hickman Company,
Defendants-in-Error.

No. 373.

Additional and Reply Brief for Plaintiff-in-Error.

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vs.

THE KELLY-HICKMAN COMPANY,
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No. 373.

ADDITIONAL AND REPLY BRIEF FOR PLAINTIFF-IN-ERROR.

These cases involve a most interesting and important constitutional question, namely, the right of the legislature to trespass upon the freedom of contract. As there is an apparent conflict in the authorities on

the question, we felt that it deserved and demanded oral, as well as written, argument; but as we could not be reached this term, we agreed with opposing counsel to submit on briefs, provided the court would grant both parties ten days time within which to file additional briefs. This the court did, and, as the facts and the issues were identical in both cases, it was ordered that they be heard together.

We will first reply to some of the contentions of plaintiffs' counsel (defendants-in-error in this court) and will then make a few points which have occurred to us since our former brief was written.

I.

PLAINTIFFS CONTEND THAT THE VIRGINIA ACT IS NOT CLASS LEGISLATION BECAUSE IT APPLIES TO *ALL* EMPLOYERS AND LABORERS OF A CERTAIN CLASS.

We submit that this is not the test. An act of the legislature is certainly unconstitutional if it does not apply to *all* of a class; but the reverse does not follow—it may apply to *all* of a class and still be unconstitutional.

Mr. Cooley says:

> "The doubt might also arise, whether a regulation made for any one class of citizens entirely arbitrary in its character, and restricting their rights, privileges, or capacities in a manner before unknown to the law, would be sustained, notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended.—like the want of capacity in infants and insane persons; and if the legislature

should undertake to provide that persons following some special lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict.

"To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large would be to deprive them of *liberty* in particulars of primary importance to their pursuit of happiness, and those who should claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and wherein the authority is the negatived."

Cooley's Const. Lim. (7th Ed.) 561.

This court is equally pronounced on the subject. In Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, the court had for consideration the Illinois Anti-trust Statute which exempted from its operation the producers of agricultural products and the raisers of live stock. The court said:

"The difficulty is not met by saying that generally speaking the state, when exacting laws, may in its discretion, make a classification of firms, corporations and associations in order to subserve public objects. For this court has held that classification must always rest upon some differ-

ence which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. * * * The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the security of free government."

Now we submit that the classification in the case at bar does *not* "rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed". There is no more reason for prohibiting coal operators and manufacturers from paying their employees in other than money than there is for prohibiting railroad companies, contractors, timber men, merchants, farmers and numerous other *classes* from so doing.

It may be answered that the purpose of the act was to prevent employers who are *in the habit of keeping stores, or commissaries*, as they are called, from forcing their employees to accept merchandise at exorbitant prices in payment of wages. If so, the reply is—

First:—That contractors for grading railroads, turnpikes, &c., cotton planters, logging operations, and many others who are *not manufacturers*, and are *not included* in the act, habitually, or at least frequently, run commissaries and pay their labor partly in merchandise. If such was the purpose of the legislature these should have been included.

Second:—The act includes *all* manufacturers. Many manufacturers do not run commissaries. In fact, few, if any, manufacturers located in cities, run commissaries. It is clear, therefore, that the act was not intended to apply only to those who conduct store departments.

Again, it is contended by counsel that "coal-diggers" are not on an "equality" with their employers—that they are under more or less duress; and that, therefore, there is not in the nature of things, and cannot be, freedom of contract between them; and that for this reason they need legislative protection. Fifty years ago there might have been some plausibility in this argument. But today when nearly every coal-digger belongs to the United Mine Workers, we imagine that this argument will fall on deaf ears. The truth is that it is the *operators* who now need protection! Recent events in West Virginia and Colorado prove the truth of this assertion.

But the act applies to *all* manufacturers, and their employers. Can it be said that all *such* employees need protection? We submit not. But if it can be, then it is equally true that all *other* employees, whether of manufacturers, or farmers, or railroads or others need protection. The failure to give it to all, renders the act invidious and void as class legislation.

Counsel refer to the fact that the West Virginia court reversed the decision in Goodall vs. State. This is true; *but it did not reverse itself on this question of class legislation.*

In the case of Peel Splint Co. vs. West Va., after quoting from the former case to show that the decision was largely based on the rule against class legislation, the court said:

"It will be seen therefore, that it was this invidious distinction, separating miners and manufacturers from the rest of the community, and imposing upon them burdens not inflicted upon others, that rendered the Act of 1887 unconstitutional, and made the legislation embraced therein distinctly class legislation. *In the act which we are now considering this objection is entirely removed.*" (Italics ours.)

II.

EVEN IF THE ACT SHOULD BE HELD TO BE WITHIN THE POLICE POWER, THIS WOULD NOT RELIEVE IT FROM THE OBJECTION THAT IT IS CLASS LEGISLATION.

The legislature may pass an act prohibiting all infants under fourteen years of age from working in mines. But it could not prohibit *colored* infants only from working in mines.

So it may prohibit girls under fourteen from marrying. But an act prohibiting *red-headed* girls under fourteen from marrying, would be unconstitutional.

III.

THE POLICE POWER.

Unless the Virginia Act falls within the doctrine of "police power", it is unconstitutional whether it is class legislation or not. The decisions on the subject are in hopeless confusion and contradiction. In nearly all the cases most like this, one or more of the Judges dissented from the opinion of the majority. Instance Peel Splint Coal Co. vs. State (W. V.) and Lochner

vs. New York. Such being the case, we deem it useless to attempt any further detailed discussion of the cases themselves or any attempt to reconcile them. We desire, however, to call attention to a few propositions which we think worthy of consideration.

First.—If an act of the legislature is clearly repugnant to the constitution then it is not save by the police power doctrine.

> "Action in the nature of police regulations is void if against the express provisions of the constitution though otherwise within the general power to make police regulations." State vs. Fraehlich, 115 Wis. (91 N. W. 115).

This would seem too plain for argument, and yet in some of the cases it would seem to be assumed that if an act is clearly within what is generally called the police power it may entirely override the constitution. We submit that this is carrying the doctrine too far. The constitution is the conscience of the court, and where it speaks with no uncertain tongue, its dictates should be obeyed regardless of consequences—we should hue to the line let the chips fall where they may.

We submit that the act in question does violate the express provisions of the Fourteenth Amendment. It takes from certain persons their property without due process of law. Labor is property. The right to sell or buy labor for what one wishes is of labor's essence. To deprive one of this right is a taking of property.

Second.—The usual statement of the "police power" doctrine is much too broad.

That statement is that "it is an act which is designed to promote the health, morals, safety or wel-

fare of the public". Some authorities add "or good order of the public". This definition would include *every* act of a public nature on the statute books. If not intended to promote the "health, morals or safety" of the public, it could certainly be shown that it was at least intended to promote the public *welfare*.

Manifestly, there must be some *limitation* to the power not generally expressed by the authorities. We insist that the limitation is the constitution itself. But if wrong in this—if the legislature can, in the exercise of its police powers, override the constitution, then we insist that there is still a limit beyond which it cannot go. This limit is thus expressed by Christiancy, J., in People vs. Jackson & Michigan Plank Road Co., 9 Mich. 285, 307:

> "Powers which can only be justified on this specific ground (that they are police regulations), and which would otherwise be clearly prohibited by the constitution, can be such only as are so clearly necessary to the safety, comfort and well-being of society, or so imperatively required by public necessity, as to lead to the rational and satisfactory conclusion that the framers of the constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the language of the prohibition would otherwise include it."

Certainly this is *as much* as any one who seeks to contravene the letter of the constitution can contend for.

Applying this test to the present case, can it be said that the taking away from employees of their right to sell their labor for what they choose is "so clearly

necessary to the safety, comfort and well-being of society, &c." as to lead to the conclusion that the framers of the constitution did not intend to prohibit it? On the contrary, can we not safely say that nine out of ten of the framers of the constitution, men who were imbued as never were men before or since with the sacredness of the liberty of the individual, would turn in their graves if such a charge were made against them!

Third.—The burden of proof is on the plaintiffs to show that the act is within the police power.

We admit that the *general* burden is on him who asserts that an act is unconstitutional. We have carried this burden by showing that the act in question is prohibited by the letter of the constitution. Having done this the burden shifts to him who alleges that the constitution is not applicable because the act is a valid exercise of police power. We defy plaintiffs to show that there is any public necessity whatsoever for such an act. On the other hand, we think we can show affirmatively that the act is a detriment instead of a benefit to the very people that plaintiffs contend it was designed to protect.

1st. It is important to miners that they should be able to get credit between pay-days. The act would cut off their only source of credit.

2nd. It is generally customary for the mining companies to furnish one or more skilled surgeons and physicians to serve their employees. It would be folly to attempt to operate a coal mine in any other way, because if the matter were left to the men, many of them would not send for a doctor when one was needed, and disease, especially contagious disease, would be apt to spread throughout the camp. The doctor is em-

ployed by the company, but his salary is paid by the men, that is, the company reserves fifty cents or a dollar a month from the wages of each man and pays it to the doctor. In other words, the company in part pays the wages of each man in *doctors' services*. The second section of the act prohibits this.

3rd. The most up-to-date operators in the Virginia coal fields are encouraging their miners to keep milk cows and to cultivate small gardens for themselves and families. Men who have milk cows and gardens will stay longer at one place and render more regular and better service than the shiftless roving class who are here today and there tomorrow. This practice is undoubtedly a good practice for both operator and miner. The rent for pasture and garden is deducted from the wages of the miner—he is paid in part *with other than money*. Yet this is a violation of the Virginia act.

4th. Some few companies in the country are paying a part of the wages of their men in stock of the company, thus giving them opportunity to share in the profits. This practice is looked upon by many philanthropists as the cure of most of the labor troubles. Yet under the Virginia act this cannot be done.

5th. The act would prevent the employer from agreeing with the employee that a percentage of his wages should be paid on his home and that at the end of a certain period the employer would make him a deed therefor.

6th. The act, if applied to farmers would prevent the hiring of hands on crop-system.

In short, it is hard to conceive of a more meddle-

some interference with the time-honored rights of both employee and employer.

7th. While, as we have shown, the act would do injury in many ways, there is only one way in which it is claimed it would do good, and we think this claim is untenable. The claim is that the act was intended to prevent the employer from charging the employee excessive prices for merchandise. It may be that the commissary prices at the mines are somewhat higher than cash prices in neighboring stores. But if this is true, it is also true that miners get higher wages than laborers generally in work requiring equal skill. If they lose on merchandise purchased, they make it up, and more, on wages paid.

Moreover, it is doubtful if the miner would ever buy with his scrip or orders, even if they were payable in cash, from the independent store a cent cheaper than he could buy at the commissary of the company, *because the independent store keeper would charge him a discount on the orders.* The independent store keeper pretends to be a great friend of the poor oppressed miner, but he never forgets that "charity begins at home".

The act was, we believe, really passed at the instance of and for the benefit of, the store keepers, rather than miners. It is the store keepers, not the miners, who are complainants here; the agreed facts show that the orders were issued *at the request* of the miners, and that the custom of paying, or rather, *advancing,* to employees in these orders, payable in merchandise, was *known* to them and that they *acquiesced* therein.

Respectfully submitted,

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